TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

[redacted]

SUPREME COURT OF THE UNITED STATES.

No. 438.

THE UNITED STATES, APPELLANTS,

vs.

EDWARD PADELFORD.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Claimants' petition	1	1
Traverse by the solicitor	4	2
Amended petition, separating the interests of the two original claimants	5	2
Special pleas	6	3
Replication to special pleas	7	3
Final judgment of the court	8	4
Application for the allowance of an appeal	9	4
Order of Chief Justice Casey allowing the appeal	9	4
Findings of fact and of law	10	4
Certificate	24	8

1 In the Court of Claims.

Amended petition.

To the honorable the judges of the Court of Claims:

Your petitioners, Randolph Mott, of Columbus, Georgia, and Edward Padleford, of Savannah, Georgia, respectfully show to your honors that in the month of December, 1864, at the time of the capture of Savannah by General Sherman, they were possessed of twelve hundred and ninety-three bales of cotton as of their own property, which were stored in the city of Savannah, Georgia, in several houses, some of which were owned by said Padelford, and thus were leased by him; and the said cotton was captured by the army under the command of General Sherman, and was soon thereafter taken possession of by a duly authorized agent of the treasury, and was forwarded to New York City, and was there sold, and the proceeds placed in the treasury, as your petitioners believe, to an amount of which they are not informed, but which they believe, and so charge, to have been not less than three hundred and thirty-five thousand dollars; and your petitioners claim the amount of the proceeds of said cotton after the deduction of all lawful expenses attending the disposition thereof.

And your petitioners further show that they were the owners of said cotton, and are justly entitled to the proceeds thereof under the third section of "An act to provide for the collection of abandoned property," &c., approved March 12, 1863, (12 Stat., 820,) and that they have
2 never given any aid or comfort to the rebellion, or in any way voluntarily abetted or given encouragement to the same, but have always borne true allegiance to the government of the United States.

This claim was presented to the Secretary of the Treasury and rejected for want of jurisdiction, as shown in the accompanying papers, marked Exhibits A and B.

RANDOLPH L. MOTT.

DISTRICT OF COLUMBIA, *Washington County, ss:*

Before the undersigned, a notary public in and for said county, duly commissioned and qualified, personally appeared Randolph Mott, one of the claimants above named, and signed the foregoing petition in my presence, and made oath that no assignment or transfer of the claim set forth in the foregoing petition, or of any part thereof, or any interest therein, has been made; that the claimants are justly entitled to the amount claimed in the petition after deducting all just credits and offsets, and that he believe the facts as stated in the said petition are true.

Subscribed and sworn to before me this 9th day of April, 1867.

[L. S.] CH'S. MCNAMEE, *N. P.*

A.

PROVIDENCE, *October* 27, 1866.

SIR: I have already spoken to you and to the Secretary of War, touching the indebtedness of the government to Mr. Edward Padelford, of Savannah, Georgia, for cotton belonging to him, and seized by the military authorities, and sold for account of the treasury. I have known Mr. Padelford many years. Throughout the rebellion he held firmly to the Union, and exposed himself to insults and injuries.
3 Nothing but his high character and position rendered it possible for him to remain there with personal safety. I suppose he stood

in Savannah, as a merchant, much as Pettigrew stood in Charleston as a lawyer. I do not doubt that whatever ought to be done with my cotton or your cotton, if either of us had had any in Savannah when Sherman entered the city, ought to be done with his cotton. It will be a reproach to the government if the fortitude and patriotism of such a man is repaid by the seizure of his property and a refusal to compensate him.

Very respectfully, your obedient servant,

H. B. ANTHONY.

Hon. HUGH MCCULLOCH,
Secretary of the Treasury.

B.

TREASURY DEPARTMENT, *December* 8, 1866.

SIR: Your communication of October 27th last, in relation to the cotton owned by Mr. Padelford, and captured at Savannah, only reached me this morning.

Mr. Padelford's case, as represented to me, has seemed to be one of peculiar merit; but under existing legislation, as defined by the Attorney General, I have no discretion in such cases and no power to afford any relief. All I can do is to remit claimants, in cases of capture by the military authorities, to the Court of Claims, where, I am convinced, meritorious cases, coming within the law on the subject, will be adjusted without unnecessary or unreasonable delay.

A copy of the Attorney General's opinion on the subject is herewith enclosed for your information.

Very respectfully,

H. MCCULLOCH,
Secretary of the Treasury.

Hon. H. B. ANTHONY,
United States Senate.

4 In the United States Court of Claims.—December term, A. D. 1866.

RANDOLPH MOTT & EDWARD PADELFORD
vs.
THE UNITED STATES. } No. 2462.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimants in the sum of three hundred and thirty five thousand dollars the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

JOHN J. WEED,
Ass't Solicitor for the United States.

5 In the Court of Claims.—Dec. term, A. D. 1867.

PADELFORD AND MOTT
vs.
THE UNITED STATES. } 2462.

It is agreed that the petition in this cause stand as amended by the

addition of the following clause: And your petitioners pray the judgment of this court, for the amounts severally due them, to wit, in favor of Edward Padelford for one-half the amount of said proceeds, and in favor of Randolph L. Mott for one-half of said proceeds.

CARLISLE & McPHERSON, *for Claimants.*
JOHN J. WEED, *Ass't Sol'r for the U. S.*

The aforesaid amendment filed and allowed April 6th, 1868.
Per curiam.

6 In the United States Court of Claims.—December term, A. D. 1868.

EDWARD PADELFORD *vs.* THE UNITED STATES. } No. 2462.

And the defendants, by their Attorney General, come, for a further plea to the petition of the claimant herein, say, that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents, therein set forth were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," approved March 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the government, and for the better defense of the treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

7 In the Court of Claims.

EDW'D PADELFORD *vs.* THE UNITED STATES. } No. 2462.

And now comes the claimant, and to the first special plea of the defendants says that the said petition was filed within two years after the suppression of the rebellion, to wit, on the 7th day of March, A. D. 1866.

And to the second special plea of the defendants the claimant says that he was not at the time of filing the said petition, is not now, and never was an alien, but is a native-born citizen of the United States.

CARLISLE & McPHERSON,
Attorneys for Claimant.

(Indorsed:) 2462. Filed in replication. Carlisle & McPherson. Feb. 3, '69.
Filed Feb'y 3, 1869.

8 In the Court of Claims.

EDWARD PADELFORD
vs.
THE UNITED STATES. } No. 2462.

And now, to wit, 29th of March, A. D. 1869, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Edward Padelford, claimant, have and recover of and from the United States the sum of one hundred and twenty-three thousand one hundred and thirty-eight dollars eighty-five cents, ($123,138 85.)
By the court.

9 In the Court of Claims.—December, 1868.

EDWARD PADELFORD
vs.
THE UNITED STATES. } No. 2462.

To the Court of Claims:

The defendants hereby make application for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered in this action on the 29th day of March, 1869, in favor of the claimant, for the sum of one hundred and twenty-three thousand one hundred and thirty-eight dollars and eighty-five cents, ($123,138 85.)
Dated June 1, 1869.

ROB'T S. HALE,
Special Counsel of Treasury Dep't.
T. LYLE DICKEY,
Ass't Att'y Gen'l.

Filed June 3, 1869, in the clerk's office.

At chambers.

Ordered, that the appeal prayed in the case of Edward Padelford vs. the United States, No. 2462, be allowed.
June 3, 1869.

JOS. CASEY, *Ch. J. C't of Claims.*

10 United States Court of Claims.—December term, 1869.

EDWARD PADELFORD
vs.
THE UNITED STATES. } No. 2462.

The finding of facts.

An appeal having been taken in this cause by the defendants to the

Supreme Court of the United States from the judgment rendered in this court in favor of the claimant, the said Court of Claims now finds and certifies the following facts in this case:

1. That the petitioner, Edward Padelford, is a citizen of the State of Georgia, and in December, 1864, he and Randolph L. Mott, likewise a citizen of the State of Georgia, jointly, and as tenants in common, owned and were possessed of 1,293 bales of cotton then stored in the city of Savannah.

11 2. That said cotton was stored in said city at the time of the capture thereof by the United States forces, 21st December, 1864.

3. That after the capture of said city said cotton was taken possession of by the United States military authorities; by them turned over to the proper agents of the United States treasury; by them transported to New York and sold, and the net proceeds, amounting to $246,277 70, paid into the United States treasury.

4. That on the 7th day of March, 1866, said Padelford and Mott presented their joint petition in this court, praying to recover the said net proceeds.

That thereafter, by leave of this court duly filed, said Padelford and Mott were allowed to sever in their claim and to sue severally for their respective interests.

That on the 13th April, 1868, the said Mott, so suing severally, recovered judgment against the United States for his share of said

12 net proceeds, being one-half thereof, and amounting to the sum of $123,138 85, and the said Padelford continued his suit in this court for his several claim upon his amended petition.

5. That the said Edward Padelford never gave any voluntary aid or comfort to the late rebellion or to persons engaged therein; but did during said rebellion consistently adhere to the United States, unless the matter of the special facts hereinafter found constitute in law such aid and comfort.

6. That in April, 1861, and after the breaking out of the rebellion against the United States, a subscription for a loan of fifteen million of dollars to the confederate government was opened in the city of Savannah, and all persons were expected and required to subscribe to it who were able to do so, and declarations and threats were publicly made that all who did not subscribe voluntarily should be made to sub-

13 scribe. These threats were openly made at the place of subscription, and by persons influential with the populace. Mr. Padelford's name was mentioned, his absence was remarked upon, and inquiries were made as to where he was; and it was publicly threatened that if the Marine Bank, of which he was a director, did not subscribe liberally, it should be pulled down. Mr. Padelford was informed of these things and advised to subscribe to the loan because of them, by friends, loyal as well as rebel, and, under these threats and the pressure of circumstances stated, he subscribed $5,000 to the loan, and declared he did it unwillingly and because of the public excitement, and he sold out the stock he had subscribed for in two weeks after.

7. The Marine Bank of the City of Savannah was in 1861 under the direction of northern men, and Mr. Padelford was one of its most influential directors and largest stockholders; and when the other

14 banks of Savannah increased their capital stock, and lent their funds to the aid of the confederacy by exchanging them for confederate notes and securities, the Marine Bank objected to doing so, and instead contracted its business for its own security. This conduct and the known loyalty of many of the directors of the bank subjected it

to public odium, and it was nicknamed the Yankee Bank. At the time the subscription to the loan was opened in Savannah the political excitement was at its highest point, and it was, as has been stated, publicly threatened that if the bank did not subscribe liberally it should be pulled down. Under these threats and the pressure of the circumstances stated, the bank subscribed $100,000 to the confederate loan, and this was the least it could subscribe according to its capital; and its refusal to subscribe would have endangered the bank and its directors;
15 but Mr. Padelford opposed the loan made, and from that time absented himself for the most part from the meetings of the directors, on the ground that the course of the bank was controlled by outside pressure.

16 8. That the said Edward Padelford, on the 27th day of May, 1861, in connection with Joseph Locke as principal, and George L. Cope as co-surety, voluntarily executed as surety an official bond of Joseph Locke as commissary of the volunteer forces of the so-called Confederate States of America, by which the said Locke, Padelford, and Cope jointly and severally bound themselves unto the said Confederate States of America in the sum of twenty thousand dollars, conditioned that the said Locke should truly and faithfully execute and discharge all the duties of the said office according to law, and fully pay and account for all moneys and public property and supplies which he might from time to time receive, and render full and true accounts of the disposition of all such moneys and public property and supplies in such manner and at such times as he might be required by the
17 secretary of the war department, (meaning the secretary of the war department of the so-called Confederate States,) or by such other officer as might by law (meaning the laws of the so-called Confederate States) be empowered to require the same.

9. That the said Edward Padelford, on the 26th day of August, 1862, in connection with Robert H. Footman as principal and George L. Cope as co-surety, voluntarily executed as surety another official bond of the said Robert H. Footman as assistant quartermaster of the provisional army of the so-called Confederate States of America, whereby the said Footman, Padelford, and Cope bound themselves jointly and severally to the said so-called Confederate States in the sum of twenty thousand dollars with the same condition in substance as specified in said bond of said Locke.

18 10. That the said Edward Padelford, on the 13th day of November, 1862, in connection with George L. Cope as principal, and Daniel H. Baldwin as co-surety, voluntarily executed as surety, another official bond of the said George L. Cope as assistant commissary in the provisional army of the so-called Confederate States of America, whereby the said Cope, Padelford, and Baldwin bound themselves jointly and severally to the said so-called Confederate States in the sum of twenty thousand dollars, with the same condition in substance as specified in said bond of said Locke.

11. That the said Edward Padelford, on the 1st day of October, 1863, in connection with Edward C. Legriel as principal, and William C. O'Driscoll as co-surety, voluntarily executed as surety another official bond of the said Edward C. Legriel as Confederate States tax collector of the so-called Confederate States of America, for the collection of taxes in the eastern division, No. 1, of said so-called Confederate
19 States, whereby the said Legriel, Padelford, and O'Driscoll bound themselves jointly and severally to the said so-called Confederate States in the sum of fifty thousand dollars, conditioned that the said

Legriel should truly and faithfully execute and discharge all the duties of the said office according to the law in such cases provided for, and in conformity to an act of congress, (meaning the congress of the so-called Confederate States government.)

12. That the said Edward Padelford, on the 31st of day October, 1863, in connection with Algernon S. Hartridge as principal, and Gazaway B. Lamar and John R. Wilder as co-sureties, voluntarily executed as surety another official bond of Algernon S. Hartridge, as Confederate States tax collector of the so-called Confederate States of America, whereby the said Padelford bound himself to the so-called Confederate States, in connection with the said Lamar and Wilder, in the sum of fifty thousand dollars, binding the said Padelford personally in the sum of twenty thousand dollars as a component part of said sum, conditioned that the said Hartridge should truly and faithfully execute and discharge all the duties of the said office as Confederate States tax collector, for district of the western division, No. 1, in conformity with the act of congress, (meaning the congress of the so-called Confederate States of America.)

13 ~~12.~~ That the said Locke, Footman, Cope, Legriel, and Hartridge thereupon respectively entered upon and discharged the functions of their respective offices to which they had been appointed under the laws of the so-called Confederate States, and served in the said respective capacities in the respective military and civil service of the said Confederate States during the late rebellion against the United States, under the said respective bonds, which were required by the laws and regulations of the said so-called Confederate States, as qualifications for the holding of said respective offices.

14. That the said Locke, Footman, Cope, Legriel, and Hartridge were, and for some years had been, respectively, intimate personal friends of the said claimant.

15. That the said Footman, Cope, Hartridge, and Legriel were within the terms of the conscription acts pending or in force at the time of the execution of their several bonds, and all the said persons by their appointment to the offices therein designated escaped active military service in the field and were enabled to remain at their homes in such service respectively.

16. That the said elaimant was induced to execute the several bonds hereinbefore mentioned by motives of personal friendship and regard for the several principals in said respective bonds.

And the court, upon the said facts, did decide and conclude as matter of law, that the said facts so found did not constitute the giving of aid or comfort by the said Padelford to the rebellion or to persons engaged in the rebellion within the provisions of the acts of March 12th, 1863, and June 25th, 1868, and did not bar the claimant from recovering in this action the net proceeds of the property in question. And the court further find that, on the 18th day of January, 1865, after the capture of the city of Savannah, and before any actual seizure or taking possession of the property in question by the military, otherwise than by the capture of the city, the said claimant did, in due form of law, take and subscribe the oath of amnesty and allegiance to the United States government prescribed by the President's proclamation of December 8th, 1863, issued in pursuance of the 13th section of the act of Congress approved July 17th, 1862, that he was not, as to his person or property, within the exceptions of the said proclamation in the premises; and that he thenceforth complied with all the requirements and conditions named in the said

12 Stat — 12 Stat

act and proclamation, and kept and maintained the said oath of allegiance and amnesty inviolate.

And upon the said facts so found, the said court does thereupon adjudge that the said claimant is entitled to receive the net proceeds of said cotton, after the deductions specified in the act of 12th March, 1863, which net proceeds amount to the sum of $123,138 85.

24 In the Court of Claims.

EDWARD PADELFORD
vs.
THE UNITED STATES. } No. 2462.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for the defendants for the allowance of an appeal, as filed in the clerk's office June 3d, A. D. 1869; and of the order of the Chief Justice of said court at chambers, allowing the same; of the findings of fact and the conclusions of law thereon, on which said court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 25th day of March, A. D. 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 438. The United States, appellants, vs. Edward Padelford. Court of Claims.
Filed 25th March, 1870.

O

act and proclamation, and kept and maintained the said oath of allegiance and amnesty inviolate.

And upon the said facts so found, the said court does thereupon adjudge that the said claimant is entitled to receive the net proceeds of said cotton, after the deductions specified in the act of 12th March, 1863, which net proceeds amount to the sum of $123,138 85.

24 In the Court of Claims.

EDWARD PADELFORD } No. 2462.
vs.
THE UNITED STATES. }

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for the defendants for the allowance of an appeal, as filed in the clerk's office June 3d, A. D. 1869; and of the order of the Chief Justice of said court at chambers, allowing the same; of the findings of fact and the conclusions of law thereon, on which said court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 25th day of March, A. D. 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 438. The United States, appellants, vs. Edward Padelford. Court of Claims.
Filed 25th March, 1870.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES, Appellants,
vs.
EDWARD PADELFORD, Appellee. } No. 438.

BRIEF FOR APPELLEE.

This is an appeal by the United States to reverse a judgment of the Court of Claims.

THE CASE.

The suit was brought in that court under the act approved March 12, 1863. (12 Stats., chap. 120, p. 820.)

The 1st section of that act authorizes the Secretary of the Treasury to appoint agents to collect captured and abandoned property in the insurrectionary States.

The 2d section authorizes the sale of it at auction, and the payment of the proceeds into the treasury.

The 3d section, among other things, authorizes any person claiming to own such property to "prefer his claim to the proceeds thereof in the Court of Claims, and upon proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the [present] rebellion, to receive the residue of such proceeds after the deduction of * * the expenses of transportation and sale of said prop-

erty, and any other lawful expenses attending the disposition thereof."

The petition was filed March 7, 1866, and amended April 9, 1867. It was filed jointly by the appellee and one Randolph L. Mott, to recover the proceeds of one thousand two hundred and ninety-three bales of cotton, which they had acquired as joint owners in 1861, and which, being stored in Savannah, was, after the capture of that city, seized by the military authorities and sold by the treasury agent in New York, and the proceeds thereof paid into the treasury. (Rec., pp. 1, 5.)

On the 6th of April, 1868, they severed in their suit. (Rec., pp. 2, 3.) Judgment was rendered in favor of Mott for one-half of the proceeds, on the 13th of April, 1868. (Rec., p. 5, 4th finding.)

In June, 1868, an act of Congress was passed, requiring "that whenever it shall be material in any suit or claim before any court to ascertain whether any person did or did not give any aid or comfort to the late rebellion, the claimant or party asserting the loyalty of such person to the United States during such rebellion shall be required to prove affirmatively that such person did, during said rebellion, constantly adhere to the United States, and did give no aid or comfort to persons engaged in said rebellion." (Act approved June 25, 1868, chap. 71, sec. 3, 15 Stats., 75.)

In May, 1869, judgment was rendered in favor of Padelford for the other half of the proceeds, and an appeal was taken to this court.

The Court of Claims have found and certified the facts in conformity with the rules prescribed by this court, and the question is, whether upon the facts so found the judgment can stand.

THE FACTS.

Two facts are required by the statute as necessary to enable the claimant to recover—

1. That he was the owner of the cotton when captured, and has a right to the proceeds.

2. That he has never given any aid or comfort to the rebellion.

The first fact is certified in terms by the court as an ultimate fact, and no question arises in regard to it.

The second fact is in terms certified as an ultimate fact, qualified by a clause intended to present a question of law for the determination of this court, *that is to say*, the Court of Claims certify "that the said Edward Padelford never gave any voluntary aid or comfort to the rebellion or to persons engaged therein, but did during the said rebellion consistently adhere to the United States, unless the matter of the special facts hereinafter found constitute in law such aid and comfort." (Rec., p. 5, par. 5.)

Thus the question presented is, whether certain facts constitute in law aid and comfort to rebellion. Those facts are of two kinds: 1. Loaning money to the so-called Confederate States; 2. Becoming surety on the official bonds of officers of the said States.

POINTS.

I. It is not found that the acts so done were done with any intent to aid the rebellion.

(*a.*) Without such intent the act is not one of aid and comfort.

"Aid and comfort" and "adherring to" enemies, in the sense of assisting rebels and enemies, comes into our law through our constitution from the statute of 25 Ed. III, ch. 5, and, in adopting them, says Story, (Com. Const., sec. 1799,) "the framers of the Constitution have recognized the well-settled interpretation of these phrases in the administration of criminal law which has prevailed for ages."

In trials under that statute, it has always been held that "the intention in these cases is of the essence of the offense." (1 East., C. L., 66.) Thus, attacking and actually driving the king's forces from their quarters is not treason in a given case, "there being no intention against the king's power or government." (*Ib.*) So, carrying off the king's stores is treason, if

done to aid an enemy; larceny, if done merely for the sake of gain; or may be merely malicious mischief, if done with out either motive. (*Ib.*)

Actus non facit reum nisi mens sit rea.

"To make a complete crime, cognizable by human laws, there must be both a will and an act. * * * And as a vicious will without a vicious act is no civil crime, so on the other hand an unwarrantable act without a vicious will is no crime at all." (4 Bl. Com., 21.)

"It is a general rule in law, as well as in morals, that a criminal mind and intention is essential to the constitution of guilt, and the mere external act is innocent or criminal according to the intention of the agent from which it resulted." (4 Stark. on Ev., 738, and *seq.*)

(*b.*) The intent not being found by the court, is not presumed by law.

Whether the accused "intended the particular consequence is a question of fact for the jury." (4 Stark. on Ev., 738.)

Where an act is in itself indifferent, but if done with a particular intent becomes criminal, the intent must be found by the jury. (R. *vs.* Woodhull, 5 Bun., 2667; Brown's Com. on Com. Law, 872.)

So one becomes accessory to a felony by "receiving, relieving, comforting, or assisting a felon." (1 Ch. Cr. L., 265.) "But the assistance and support must be given in order to favor an illegal escape." To support, receive, comfort, and assist him under other circumstances may be laudable. (*Ib.*) And, the act being in itself indifferent, no unlawful intent is presumed, but must be proved.

(*c.*) But the court has not only not found any guilty intent, but has found a contrary motive, to wit, that the subscription to the Confederate States loan was extorted of the claimant by fear; and that in becoming surety for Confederate officers he acted from motives of friendship solely; that of the five whose surety he became four were conscripts, and were by his suretyship saved from service in the ranks and enabled to remain at home with their families. As to the fifth officer, the particular occasion of becoming his surety is not stated, but, as the act was done about the time when he sub-

scribed to the loan under compulsion, he may have had reasons quite as sound for one act as for the other. He may, for example, have desired to secure a friend in case of need with power to protect him from further compulsion of the same kind.

See also Puffendorff Lib. VII, chap. 10.

Be this as it may, the finding of the court omits the guilty intent, and ascribes the acts to other and innocent motives.

ADDITIONAL FACT—AMNESTY.

Another fact is certified by the Court of Claims, upon which that court does not ground its judgment, but which will sustain the judgment if the other facts proved are insufficient.

The claimant took and kept the oath prescribed by the President's proclamation of December 8, 1863, and thereby became entitled to all the rights of pardon and protection promised by that proclamation.

The act of July 17, 1862, sec. 13, authorized the President, by proclamation, to extend to all persons pardon and amnesty. (12 Stats., 589–592.)

The President, by proclamation on the 8th of December, 1863, offered amnesty and pardon to all persons, with certain exceptions, who should comply with the terms therein prescribed. By this proclamation he expressly promised restoration of all rights of property, with certain exceptions, to those who should accept the terms offered. (13 Stats., 739.)

The claimant is found by the court not to have been within any of the exceptions, and to have accepted the terms offered, and fulfilled the conditions. (Rec., p. 7, finding, 16.)

This was before the capture of the property in question, unless the capture of the city was the capture of the property, which, we submit, it was not.

POINTS.

1. The property was seized after the amnesty or pardon by proclamation. The capture of the city was not the capture of the property in question.

2. All offenses committed by the claimant before the amnesty are thereby obliterated to every legal intent.

Armstrong's Foundry, 6 Wall., 766.

St. Louis Street Foundry, 6 Wall., 770.

3. If not, the proclamation was a promise by the President that the property of such persons should not be seized, and it ought to be respected.

The Venice, 2 Wall., 259.

CONCLUSION.

We submit that the judgment should be affirmed.

J. M. CARLISLE,
J. D. MCPHERSON,
For Appellee.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES, *Appellants*,
vs.
EDWARD PADELFORD. } No. 438.

On appeal from the Court of Claims.

BRIEF FOR APPELLANTS.

ROB: S. HALE,
Special Counsel for the United States.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES, *Appellants*,
vs.
EDWARD PADELFORD. } No. 438.

On appeal from the Court of Claims.

BRIEF FOR APPELLANTS.

The claimant, and Randolph L. Mott, jointly brought suit in the court below, under the Abandoned and Captured Property Act of March 12, 1863, (12 Stat., p. 820,) claiming the proceeds of 1,293 bales of cotton, alleged to have been owned by the claimants jointly, and to have been captured by the Union armies at Savannah, turned over to a Treasury agent, and sold, and the proceeds paid into the Treasury of the United States.

On the trial of the cause in December term, 1867, the claimants were allowed to sever in their claims, and each to claim judgment for half of such proceeds, and thereupon judgment passed in favor of Mott for his half, and the cause was continued as to Padelford.

In December term, 1868, judgment was rendered in

favor of Padelford, the claimant here, for his half of such net proceeds, amounting, as found by the court, to $\$123{,}138\frac{85}{100}$, and from this last judgment this appeal is taken.

The ownership by the claimant, the capture by the United States, and the receipt of the proceeds into the Treasury, are fully proven, and the questions raised on this appeal are mainly those relating to the loyalty of the claimant, or his relations to the late rebellion and to the Government of the United States during the same, the facts in regard to these relations being found by the court below, somewhat in detail, at pages 5 to 7 inclusive, of the record.

It further appears, that the claimant, on the 18th of January, 1865, after the capture of Savannah, in which city the cotton in question was stored, but before any actual seizure or taking possession of such cotton by the officers or forces of the United States, other than by the capture of the city, took and subscribed the amnesty oath prescribed by the President's proclamation of December 8, 1863, (13 Stat., p. 737,) issued in pursuance of the act of July 17, 1862, (12 Stat., p. 592, § 13;) that he was not within the exceptions named in said proclamation, and that he thenceforth complied with all the requirements and conditions named in said act and proclamation, and kept and maintained the said oath of allegiance inviolate.

I.

The findings of fact by the court below are in the nature of a special verdict. (Rule 1 of this court, regulating appeals from Court of Claims.)

As such, the findings must cover the whole case, and, where the judgment is in favor of the claimant, must show him to have fulfilled every requirement of the statute under which he claims.

(Co. Litt., 227, *a;* Patterson *vs.* United States, 2 Wheaton, 221; Prentice *vs.* Zane's Adm'rs, 8 How., 479, 484, and cases there cited.)

Of this, the findings as returned here come short. They find that the claimant "never gave any voluntary aid or comfort to the late rebellion or to persons engaged therein, but did during said rebellion consistently adhere to the United States, unless," &c.

There are three different statutes prescribing the requirements of claimants in the Court of Claims in this class of cases, and the claimant must conform to each and all of them.

The general "Court of Claims act" of 3d March, 1863, (12 Stat., p. 767, § 12,) the provisions of which were held by this court in "*ex parte* Zellner," decided at the present term to apply to the abandoned and captured property cases, provides that the claimant, if a citizen, shall allege and prove "that he has at all times borne true allegiance to the Government of the United States," * * * * * "and that he has not in any way volun-

tarily aided, abetted, or given encouragement to rebellion against the said Government."

The "Abandoned and Captured Property Act" of 12th March, 1863, (12 Stat., p. 820, § 3,) provides that the claimant under that act shall prove to the satisfaction of the court "that he has never given any aid or comfort to the present rebellion."

And the act of 25th June, 1868, (15 Stat., p. 75, § 3,) provides that the claimant shall "prove affirmatively" that he "did during said rebellion consistently adhere to the United States, and did give no aid or comfort to persons engaged in said rebellion."

The findings of the court below cover the provisions of neither of these statutes.

They come short of the provisions of the "Court of Claims act," in that they limit their effect to "*the late* rebellion," while that statute speaks of "rebellion" generally; and also in that they find only that the claimant "did during said rebellion consistently adhere to the United States," instead of that he "has at all times borne true allegiance to the Government of the United States;" and also in that they find that he "never gave any voluntary aid or comfort to the late rebellion," instead of that he "has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government."

They come short of the provisions of the "Abandoned and Captured Property Act," and of the act of 25th June, 1868, in the insertion of the word "volun-

tary," as qualifying and limiting the "aid and comfort" to the rebellion and to persons engaged in it, from which the claimant is required to purge himself; which word, though used in the "Court of Claims act," is carefully and intentionally omitted in the two subsequent acts.

The negatives pregnant involved in the findings are that the claimant has not "at all times borne true allegiance to the Government of the United States," and that he has "voluntarily aided, abetted, or given encouragement to rebellion against the said Government," within the provisions of the first act; that he has "given aid or comfort to the present (late) rebellion," within the provisions of the second act; and that he "did give aid or comfort to persons engaged in said rebellion," within the provisions of the third act.

These departures from the requirements of the statute are not immaterial. In each case the words of the statute are carefully chosen. In the Court of Claims act it is evident that Congress intended an exclusion much wider than the fact of treason within the constitutional definition.

It puts the affirmative upon the claimant of alleging and proving that he has at all times borne true allegiance to the United States; and this "form of sound words" cannot be supplied by the general averment that he did "consistently adhere to the United States." He is required to allege and prove that he has not in any way voluntarily *aided, abetted, or given encouragement to*

rebellion; words evidently intended to have a wider scope than the technical "aid and comfort" of the Constitution.

Again, the Abandoned and Captured Property Act imposes another additional requirement: that the claimant shall satisfy the court by proving that he has "never given any aid or comfort to the present rebellion."

The word "voluntary" is here omitted, and the omission is evidently of intent, for the Court of Claims act was under consideration and passed by the same Congress at about the same time, and the additional requirement in these special cases of proof of the absence of "any aid or comfort," without limiting it by the word "voluntary" within the general act, qualified its expression, by that word, must be taken as intentional; and the use of the disjunctive "or" in all these statutes, in place of the copulative "and" of the Constitution and of the common law of treason, is not without significance.

It is not necessary to claim that, under this statute, acts under absolute present physical compulsion, so as to utterly exclude the will of the actor and make him the mere passive instrument of others, would be held to be aid or comfort *given* by him. It will be time to determine that question when the case arises.

But the word "voluntary" has many different shades of meaning in law, as well as in the common uses of language. A contract or deed may be avoided by duress as not the voluntary act of the party, on grounds

far short of those required to make the commission of crime involuntary.

A voluntary escape permitted by a sheriff; a voluntary injury as the basis of an action of trespass; voluntary obligations and conveyances; voluntary acts of a criminal nature—all these are governed, as to the definition of the word "voluntary," by different rules. It is enough to say that Congress by omitting the word in the Abandoned and Captured Property Act and in the act of 25th June, 1868, carefully removed from the court below all jurisdiction to consider the voluntary or involuntary character of the act, unless, to say the least, so far as it is involved in the question whether the act is the act of the party. This wise and proper distinction, made by Congress, between the different kinds of proof required by claimants of different classes in the Court of Claims has been entirely ignored by the court below.

II.

But the special findings of facts which the court except from their general finding, that the claimant never gave any voluntary aid or comfort to the rebellion, and which the court decide, as matter of law, not to constitute the giving of aid or comfort to the rebellion or to persons engaged therein, within the provisions of the Abandoned and Captured Property Act, and of the act of 25th June, 1868, do constitute direct and specific acts of aid and comfort, abetting and giving

encouragement to the rebellion, within the meaning of all the statutes above cited.

(1.) The subscription by the claimant of $5,000 to the Confederate fifteen-million loan, as found in the sixth finding, (p. 5, Record,) was such an act, and precluded the claimant from a standing in the Court of Claims under the statutes in question.

The Confederate Government, so called, was in its inception, organization, and entire existence, a matter of rebellion, pure and simple, against the United States.

In April, 1861, it was engaged in actual war against the United States. A loan to it was a direct contribution of the means of waging such war. Actual service in the field was no more direct aid and support of the rebellion than a contribution of moneys, without which armies could not be kept in the field.

The facts found by the court, in regard to the inducements to the claimant for making this contribution, do not amount to coercion, so as to excuse the claimant from the consequences of his act.

No violence to the claimant was used, or even threatened; no threats of any kind were used towards him, or in his presence. The finding of the court only amounts, in substance, to the fact that there was popular enthusiasm and popular clamor in behalf of the subscription to this loan. That public declarations and threats of a general character were made, that all who did not subscribe voluntarily should be made to sub-

scribe; not threats addressed to or pointed at the claimant, and not threats of personal violence. That the claimant was informed of these things, and advised to subscribe by friends, loyal as well as rebel, and thereupon did subscribe voluntarily, though unwillingly, and induced by this popular clamor.

This is not the force, coercion, or putting in fear which the law recognizes as an excuse for the commission of an offence, or for the performance of a forbidden act. Such an act can only be excused on the ground of fear, proceeding from an immediate and actual danger threatening the very life of the party. (United States *vs.* Vigol, 2 Dal., 346; United States *vs.* Haskell, 4 Wash., C. C. R., 402, 406.)

No threat of destruction of property will excuse the act; nothing but a threat of life, and that likely to be put in execution. (United States *vs.* Hodges, 2 Wheel. Crim. Cas., 485, by Duvall, Justice; United States *vs.* Greiner, 24 Law Reporter, pp. 91, 98, by Cadwallader, Dist. Judge. Justice Grier approving, p. 101; and see 1 Hale's P. C., pp. 50, 165, 1 Am. Ed.; Rex *vs.* Gregg, 10 St. Tr., Appendix, 77; Fost., 14, 198, 216 to 218; 4 Steph. Com., 8384; Rex *vs.* McGrowther, 1 East. P. C., 71.)

(2.) The contribution by the Marine Bank, stated in the seventh finding, (p. 5,) of $100,000 to the Confederate loan, is of the same character, and the claimant is chargeable as a participator in that loan. He was "one of its most influential directors and largest stock-

holders." It is found by the court below that he opposed the loan, but not that he persistently and to the end refused to be a party to it. On the contrary, his final assent is fully implied.

And see authorities cited under last subdivision.

(3.) The several acts found in the eighth, ninth, and tenth findings, (p. 6,) in connection with the twelfth finding, (p. 7,) are direct and voluntary acts of aid and comfort to the rebellion.

At different times, from May, 1861, to November, 1862, the claimant voluntarily entered into solemn covenants with the Confederate States, then waging the war of rebellion against the United States, whereby he bound himself and his estate, in large sums of money, for the faithful execution and discharge, by Locke, Footman, and Cope, respectively, of the duties of their respective offices, as commissaries and quartermasters in the rebel armies, for the full payment and accounting for all moneys and public property and supplies which such officers had from time to time received, and for the rendering of full and true accounts of the disposition of such moneys and property by them, in such manner and at such times as might be required by the rebel Secretary of War, or by such other officer as the rebel Congress might empower to require the same.

By such obligations he aided to place these men in the actual military service of the rebellion, and to effect and maintain the organization of the rebel armies, and

thereby enable them the more efficiently to prosecute the war against the United States.

That Locke, Footman, and Cope, in their respective offices, were affording aid and comfort to the rebellion, there can certainly be no question. And it would seem to follow logically and inevitably, that the man who, by the pledge of his large estate, secured to the Confederate Government the services of these persons, assured that government against loss by their desertion, default, or incapacity, guarantied the faithful expenditure of the rebel funds in the very work of rebellion against the United States, and thereby enabled the rebellion to maintain a military organization, under which, for four years, they resisted all efforts of the Government to suppress the rebellion and reassert and restore the supremacy of the laws, was equally contributing aid and comfort to their cause. Without armies, the rebellion must have come to naught at once. Without a proper commissariat and quartermaster's department, armies could not be maintained. Those departments could not be kept up without the proper officers. The officers could not safely be entrusted with the moneys and supplies necessary for the carrying on of the war without proper security to the rebel government for the faithful appropriation of such supplies. And the man who furnished such security and gave such guarantee and assurance for the faithful application of the rebel funds to the work of rebellion, was as fully and completely, if not as directly, aiding the work of rebellion, as the com-

missaries and quartermasters whom he so put in service, or the officers and men actually bearing arms whom the quartermasters and commissaries were supplying and enabling to keep the field.

And these acts of the claimant are expressly found by the court to have been voluntary acts. The inducements or motives found by the court in the 14th, 15th, and 16th findings, (p. 7,) not only do not detract from the voluntary character of the claimant's acts, but most distinctly and positively affirm their voluntary character. It was not from coercion, not from danger or apprehension of violence to life or limb, family or property, even, but from motives of personal friendship to his several principals—the rebel officers in question—that these acts were done.

There is not even the pretense of duress, constraint, or unwillingness, which could avoid a contract or conveyance between parties, much less any such coercion as is sufficient to excuse the commission of crime.

(4.) The several acts of the claimant named in the last sub-division, on the inducement and from the motives found in the 14th, 15, and 16th findings were direct acts of aid and comfort "to persons engaged in the rebellion" within the statute of 25th June, 1868, section 3.

Locke, Footman, and Cope, were engaged in the rebellion. They desired the respective offices which they were enabled to obtain through these obligations of the claimant, to enable them to engage in the work

of rebellion in positions more to their personal comfort and satisfaction than they would otherwise be able to obtain, while still rendering service at least as effective in behalf of the rebellion. It was to promote their wishes in this respect, to give to them direct aid and comfort in their work of rebellion in its fullest sense, that the claimant pledged his fortune to the amount of tens of thousands of dollars for their faithful service in the cause of the rebellion. If they had desired, as matter of convenience and comfort to themselves, to enter the cavalry service, and the claimant had furnished them horses for that purpose; if they had desired, from the same motives, to be armed with the most approved and effective modern fire-arms, and the claimant, for the same purpose, had furnished them, he could not have been more directly giving aid and comfort to these persons engaged in the rebellion, while at the same time thus directly aiding the rebellion itself.

III.

The finding by the court (p. 7) of the taking of the amnesty oath by the claimant, in January, 1865, after the capture of Savannah, does not relieve the claimant from any disability effected by the statutes above cited, nor in anywise give him a standing in the Court of Claims under those statutes.

(1.) The oath was taken after the capture of the property in question, in and with the city of Savannah, on the 21st day of December, 1864. By that capture,

the rights of the United States, in respect to the property, were fixed and vested, and no subsequent act of the claimant could operate to revest the title in himself.

The claimant, by his petition, (p. 1,) alleges the cotton in question to have been captured by the army under the command of General Sherman; and the only capture ever made, or that could be made, was the capture by the capture of the city.

(2.) The claimant, by his petition, alleges no such ground of claim, but places himself on the distinct issue that he never gave aid or comfort to the rebellion.

(3.) The exclusion of the claimants from the Court of Claims, by reason of acts of disloyalty under the statutes cited, is not in the nature of a penalty which could be remitted by the Executive power of pardon and amnesty. The statutes in question are not penal statutes They do not purport to inflict a penalty or punishment for a crime. The jurisdiction of the Court of Claims is purely statutory. Congress may give to it and withhold from it such jurisdiction as it thinks fit, and may bound that jurisdiction by limitations and exceptions in its own discretion or caprice. Even should Congress see fit to enact that no person should maintain a suit in the Court of Claims, except on evidence that he could read and write, or that he was a member in good standing of a total abstinence society, there would seem to be no question of their power so to limit the jurisdiction of the court. And certainly,

when Congress, in providing for claims growing out of the war of the rebellion, deems it just and proper to provide that such claims shall not be entertained by that court, except by those who satisfy the court by proof that they have had no part or lot in the support or prosecution of such rebellion, its power to make such limitation would hardly seem to be a matter capable of question.

Such a limitation, when made by the legislative power, cannot be removed or extended by Executive action. The power of pardon and amnesty, under the Constitution, or under the act of 1862, includes no such effect as this. That power is merely to relieve from the penalties of guilt. The effect claimed here is to remove the legislative limitation upon the power and jurisdiction of a tribunal existing only by legislative authority. The executive power claimed by the respondent as effective to remove this limitation, would be simply a dispensing power, and not a pardoning power. It would be to give to the Chief Executive of this republic precisely the same power and control over the legislative department, the assertion of which in England, nearly two centuries ago, cost James the Second his crown.

But it is claimed that amnesty has a wider effect than pardon, and wipes out the fact of prior guilt as well as its legal consequences. Amnesty may, perhaps, wipe out the evidence of the fact, so that it could not be alleged and proved by another, to the prejudice of the party amnestied; though no such peculiar effect has ever

been given to that word by this court, or elsewhere, it is believed, except under the rule of the civil law. But here the party claiming the benefit of the jurisdiction of the Court of Claims is required to prove affirmatively the fact that he never did certain acts. This he is to prove as a historical fact, not a constructive one. And here the finding of the court below establishes that the actual historical fact is precisely the reverse. The cases of the Armstrong Foundry and the St. Louis Foundry (6 Wallace) have no application to the question as involved in this case; while the doctrines maintained by this court in ex parte Garland (4 Wallace) fully vindicate the position of the appellants here.

(4.) Again, it is claimed that the presidential proclamation of 8th December, 1863, in connection with the amnesty oath taken by the claimant, 18th January, 1865, effects some sort of contract between the United States Government and the claimant, by which the United States are estopped from claiming the proceeds of the claimant's property captured in war. The question of public faith is raised; and it is claimed, in effect, that the claimant might recover below as upon such a contract, in consideration of his taking the oath of amnesty. To this it is sufficient to answer, the Congress has given to the Court of Claims no jurisdiction to enforce such a contract; that the claimant has sued upon no such contract in that court; and that Congress having determined the conditions upon which, and upon which

only, the claimant may recover in the Court of Claims; it is only upon compliance with those conditions that he can have judgment.

The questions as to the propriety of the legislation, the vindication of the public faith, and the like, are for the legislative department, and not for the judicial. A solemn treaty with a foreign nation is the highest and most sacred form of the plighting of the public faith, and forms a part of the law of the land under the Constitution on the same footing with the acts of Congress. Yet, if after the ratification of a treaty, Congress pass laws in violation of its provisions, so far as the courts are concerned, those laws must control; and the courts could not look behind them, or undertake to control or supersede the laws on any considerations of international rights, public policy, or public faith. The Abandoned and Captured Property Act of the 12th March, 1863, and the act on the same subject of 25th June, 1868, were both subsequent to the act of 17th July, 1862, on which the presidential proclamation relied on by the claimant was based.

IV.

To hold that this claimant, on the facts established in his case, is entitled to recover, is, in effect, to break down every barrier which Congress has undertaken to place in the way of disloyal claimants for the proceeds of their property captured in war.

The act of 12th March, 1863, carefully provided for

the disposition of property so captured. That Congress had the full power to provide for the disposition of the property, public or private, of the rebel belligerants so captured, cannot be questioned. That it was for Congress to determine whether it would or would not give to any owner the right to reclaim the proceeds of such property through the Court of Claims cannot be questioned; and that they might grant such right, under such limitation and with such exceptions, as it should see fit to make. That power Congress has exercised; has granted to claimants the right to bring suit under limitations and upon conditions simply expressed, explicit, and unmistakable. The effect of the judgment of the Court of Claims in this case is to utterly fritter away and destroy those limitations and conditions. Within the principle decided by that court in this case it is difficult to conceive what objection could be made to a recovery under these same statutes by most of the efficient promoters of the rebellion in the field, in the council, and in finance. Robert E. Lee and Stonewall Jackson were "forced" into the military service of the rebellion by precisely the same kind of "pressure of circumstances," "outside influences," and the like, which "forced" Edward Padelford and his bank to subscribe to the rebel loan. Others were led into active co-operation with the rebellion by precisely the same "motives of personal friendship" which led Edward Padelford to plight his fortune for the persistency in rebellion of Locke, Footman, and Cope. Under

the liberal interpretation of the word "voluntary," and by the dexterous interpolation of that word in two statutes where it is not found, achieved by the court below in this case, it is perhaps difficult to imagine who of the rebels would be found excluded from a standing in that court under the Abandoned and Captured Property Act. But if some sporadic cases of that kind may be imagined still to exist, it only remains for this court to give to presidential pardon and amnesty the effect claimed by the respondent here, and any remaining obstacles in the road of invasion of the Treasury will have been effectually removed.

The records of the Court of Claims show that, of the 39,000 bales of cotton captured by Sherman's army at Savannah, more than 38,000 bales are claimed by suitors, whose petitions are there filed, alleging the same loyalty set up by the claimant below in his petition, though not all accompanied by the endorsements of high public functionaries like those so ingeniously dovetailed into the record in this case, (pp. 1, 2.) Should the principles urged by the respondent here receive the sanction of this court, there would seem to be no further occasion for the Government to interpose opposition to their claims.

ROB: S. HALE,
Special Counsel.

RULES OF PRACTICE

OF

THE COURT OF CLAIMS

OF THE

UNITED STATES;

THE

ACTS OF CONGRESS ESTABLISHING THE COURT,

AND IN AMENDMENT THEREOF.

1869.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1869.

RULES OF PRACTICE

OF

THE COURT OF CLAIMS

OF THE

UNITED STATES;

THE

ACTS OF CONGRESS ESTABLISHING THE COURT,

AND IN AMENDMENT THEREOF.

1869.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1869.

RULES OF PRACTICE

OF

THE COURT OF CLAIMS.

I.—The Action.

Every claim shall be stated in a petition addressed to the court, and signed by the claimant or his counsel. And there shall be appended to the petition the post office address of the claimant and of his counsel.

II.—The Petition.

The petition will consist of—

1st. The title of the action, wherein shall be set forth the full names of all the parties plaintiff.

2d. A plain, concise statement of the facts and circumstances hereinafter enumerated, giving place and date, free from argumentative and impertinent matter.

3d. The prayer, in which the claimant must state distinctly the amount for which he demands judgment, or the relief to which he may be entitled.

4th. The verification as hereinafter required.

The claimant may append to his petition as exhibits the instruments or documents to which it refers; but such exhibits will not be made evidence thereby, nor the claimant be relieved from proving them should he wish to use them as evidence.

The petition must set forth a full statement of the claim, and of the action thereon in Congress, or by any of the departments, if such action has been had, specifying also what person or persons are owners thereof, or interested therein, and when and upon what consideration such person or persons became so interested.

In every case where the claim is such as is ordinarily settled in any executive department, the petition shall show that application for its allowance has been made to that department, and without success, and its decision thereon.

If the claim be founded upon any law of Congress, or upon any regulation of an executive department, the act of Congress, and the section thereof upon which the claimant relies, must be stated, and the particular regulation of the department must be specified. If the claim be founded upon any express contract with the government of the United States, such contract must be set forth in the petition, and, if it be in writing, in the words of the contract. If it be founded upon any implied contract, the circumstances upon which the claimant relies as tending to prove a contract must be specified. If it consist of several matters or items, each shall be separately stated or articulated.

The petition shall also set forth that the claimant, if a citizen of the United States, and the original and every prior owner thereof when the claim has been assigned, has at all times borne true allegiance to the government of the United States; and, whether a citizen or not, that he has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government.

There must be annexed to the petition an affidavit of the claimant, his agent or attorney, stating that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

In all cases where the petition of the claimant shall be signed, and the affidavit thereto shall be made by the agent or attorney of the claimant, there shall be filed with the petition a regular warrant of attorney, duly executed by the claimant or claimants to the party so acting on his behalf. And on failure to file such warrant of attorney the petition will be dismissed.

III.—Departments.

When a petition is filed, the clerk shall transmit a copy thereof to the department or departments having cognizance of the subject-matter of the claim, with a letter stating that such an action has been commenced, and requesting that all the information known to or on file in the department, which may be necessary to protect the interests of the government, be communicated to this court.

If no reply be received within one month, the clerk shall communicate with the head of such department, advising him of such omission to answer.

IV.—Femes Covert, &c.

When a feme covert is a claimant, her husband must be joined with her as a party plaintiff. And where infants, lunatics, or other persons not *sui juris* are claimants, the guardian, trustee, committee, or other proper legal representatives duly appointed by the tribunal having jurisdiction of the person or estate of such persons must be made plaintiffs, and their appointment as such, duly certified, be filed with the petition at the commencement of the action.

V.—Executors, &c.

If the claimant die pending the suit, his proper representatives may, on motion, be admitted to prosecute the claim, upon filing a duly authenticated copy of the letters testamentary or of administration granted to such representatives.

VI.—Discovery.

When the petitioner cannot state his case with the requisite particularity without an examination of papers in one of the executive departments, and has been unable to obtain a sufficient examination of such papers on application, he may file a manuscript petition stating his claim as far as is in his power, and specifying as definitely as he can the papers he requires in order to enable him to state his claim. The court will thereupon make a special order calling upon the proper department for such information or papers as it may deem necessary, to be delivered to the clerk of the court to be filed in his office. The manuscript petition may then be amended, and the amended petition printed and filed, and may occupy upon the docket the place of the original petition.

VII.—Orders in Vacation.

In vacation an application for a special order to call upon a department for papers for such purpose, or for information or evidence, may be made to a judge of the court at chambers.

VIII.—Copies of Petition.

The claimant, when, or within ten days after, he files his petition, shall deliver to the clerk *fifteen* printed copies thereof for the use of the judges and the Attorney General. The printed copies must show the clerk's indorsement of the filing of the original, with the date thereof.

IX.—Demurrers and Pleas.

The Solicitor shall demur to or traverse the petition within sixty days after the filing of the same, unless, for special cause shown on motion to the court, or to a judge in vacation at chambers, the time be extended; and he may put in a special defense to the claim at any time before the hearing of the cause.

X.—Grounds of Demurrer.

When the Attorney General demurs to the petition he shall set forth the grounds of the demurrer specially in writing, and file the same of record. But if the ground of demurrer be that the petition does not set forth facts sufficient to constitute a cause of action, that objection may be stated generally.

XI.—Amendment.

After the decision on the special demurrer the claimant may amend, within thirty days, except in cases where the demurrer is sustained on the ground of want of jurisdiction or legal capacity in the claimant to sue, in which cases the petition shall be dismissed.

XII.—Counter Claims, &c.

Where a set-off, counter claim, or other special defense on the part of the United States is set up by the Attorney General, the grounds of such defense shall be distinctly set forth in writing, and filed before the hearing of the cause. And the claimant shall, within thirty days after receiving notice of the filing of the same, file his answer thereto in writing, verified by affidavit.

XIII.—Frauds.

When the Attorney General shall interpose, as a defense to the claim, that the claimant has corruptly practiced, or attempted

to practice, a fraud against the United States in the proof, statement, establishment, or allowance of any claim, or any part thereof, he shall specify in writing, and file the same of record, the grounds and facts upon which the same is based, and which constitute the fraud, or attempted fraud, alleged against the claimant. And the claimant shall, within twenty days after receiving a copy of such specification and notice of the filing of the same, file his answers to the same, verified by affidavit.

XIV.—Dockets.

There shall be kept a general docket, in which an abstract of all the proceedings in each case, with a reference to the papers filed, shall be entered. Also a journal or minute-book, in which the proceedings of the court shall be entered. Motions and interlocutory orders, when made in writing, shall not be entered *in extenso* upon the journal or docket, but an abstract of the same shall be entered, with a reference to the paper filed. There shall also be kept a trial docket, on which the cases for hearing upon testimony shall be entered in the order in which they may be traversed. Cases traversed on the same day shall take precedence according to their seniority. A law docket or list shall also be kept, on which all cases of demurrer, motions for new trials, and all other motions for hearing, in the order in which the demurrers are filed, or the motions made, shall be entered by the clerk.

There shall also be kept a "judgment index," in which an abstract of every final judgment or decree rendered by the court shall be recorded, containing the name or names of the claimants, the number and term of the case, the general docket and page upon which the same is entered, the date and amount of the judgment, the time when the appeal, if any, is entered, the result of the appeal, and the date of *remittitur*, and the date when certified for payment.

XV.—Trial Dockets.

1. The clerk shall keep a docket to be called the "watch book," and the claimant or his counsel may at any time enter his case upon said watch book by a notice, giving its style and number, and stating that the testimony in chief on part of the claimant has been closed, and directing the case to be entered upon the trial docket for the next succeeding term.

2. All such cases so entered upon the watch book at least one month prior to the making up of a trial list, as hereafter provided, shall be placed upon such trial list by the clerk, and in the order in which they stand upon the watch book.

3. No testimony in chief on the part of the claimant will be admitted after a claimant has placed his case upon the watch book, except by order of the court.

4. The trial lists referred to will be made up by the clerk for the first Monday of December, the first Monday of February, and the first Monday of April.

5. The peremptory call of the trial lists will begin on the Tuesday after the first Monday of December, February, and April, of each term. A stated number of cases will be called each day, and those not ready when called will be stricken off of that trial list, or continued for the term, unless, for special cause shown, the court shall order otherwise.

6. Cases in which the counsel reside at a distance may be set down for a day certain, with the consent of the Attorney General, without regard to their position upon the trial docket.

7. All issues of law and motions shall be placed on a law docket, which will be taken up on Monday of each week during the term.

8. Cases marked "continued" are to be understood as continued to the next term of the court, and will be brought on then as if never on the trial list. Cases marked "off" are to be understood as stricken off the trial list, and must be placed by the claimant on a subsequent trial list. Cases marked for February, or any subsequent trial list, will be placed thereon by the clerk without the action of the claimant.

XVI.—Printed Trial List.

The clerk shall furnish printed trial and argument lists to the court from time to time, which shall contain the names of parties and the counsel, and the position of each case.

XVII.—Counsel.

No counsel will be permitted to practice in the court unless he is a man of good moral character, and has been admitted or licensed to practice in the Supreme Court of the United States, or in the highest court of the District of Colum-

bia, or in the highest court of some State or Territory, of which admission he shall furnish evidence satisfactory to the court.

XVIII.—Claimant in pro. per.

Any claimant may appear in person and manage his own case.

XIX.—Commissioner.

The court will appoint permanent commissioners for the taking of testimony, and special commissioners as circumstances may require.

Every permanent commissioner shall take an oath, before he enters upon his duties, that he will faithfully discharge them so long as his commission remains in force; and every special commissioner shall take an oath faithfully to discharge his duties.

The form of a commission to a permanent commissioner shall be as follows:

Court of Claims,

To —— ——, of ——, in the county of ——, and State of ——:
—— ——, esquire:

You are hereby appointed a commissioner, for the term of two years, for the State of ——, to take the testimany of such witnesses as may come before you, to be used in the investigation of such claims as may be presented to this court against the United States. In the performance of this duty you will be guided by the rules of this court. You will take no deposition unless by consent of the parties, until it is shown to you, by the return upon the original notice, that the adverse party has been duly notified; and if he do not appear, you will affix the original notice to your certificate, and return it therewith for the information of the court.

—— ——, *Clerk.*

When special commissions are issued, such variations from the above form as may be necessary will be made. The several judges of the courts of record for the time being in the States and Territories of the United States are hereby appointed commissioners to take testimony to be used in the investigation of claims before this court, in the counties in which they may respectively reside, during the pleasure of this court; and this rule shall be a sufficient commission to each of said judges in the premises. The commissioners appointed by the Circuit and District courts of the United States for the purpose of taking testimony are hereby appointed commissioners to take testimony in the circuits or districts for which they are respectively appointed by such courts.

XX.—Subpœna.

The form of a subpœna shall be as follows:

Court of Claims,

To ——— ———:

You are hereby commanded to appear before ——— ———, commissioner appointed by this court to take depositions, on the ——— day of ———, A. D. 186—, at ——— o'clock in the ———noon, then and there to testify in the case of ——— ——— against the United States, now pending in this court. Fail not of appearance, at your peril.

Dated this —— day of ———, A. D. 186—.

——— ———, *Clerk.*

XXI.—Evidence, (by Deposition.)

The party proposing to take depositions shall cause fifteen days' notice to be given thereof to the Attorney General, or to the claimant or his counsel, as the case may be. The notice must be in writing, and must state the names of the commissioner and of the witnesses, and the day of the month, the hour, and the place of taking the deposition, and must be subscribed by the Attorney General or counsel acting for the United States, or by the claimant or his attorney of record. When the claimant proposes to take a deposition, and the witness resides more than five hundred miles from Washington, or where the Attorney General proposes to take the deposition, and the witness resides more than five hundred miles from the claimant or his counsel, one day's further notice shall be given for every additional hundred miles:

Provided, that if the claimant proposes to take a deposition in the city of Washington, three days' notice shall be sufficient. And a like notice by the Attorney General shall be sufficient when the claimant's attorney or counsel resides in the city of Washington.

Provided, also, that when the Attorney General or his assistant attends in person at the place for taking depositions, the claimant shall not be limited to the examination of the witnesses named in the notice. The same privilege shall extend to the defendants when the counsel for the claimant personally attends. Should the commissioner named in the notice be absent or decline to act, the depositions may be taken before any other person duly qualified to act in the premises.

XXII.—Evidence, (Officer.)

Whenever it is charged in the petition that a contract has been made or other liability incurred through an officer or agent

of the United States other than the head of an executive department, or the chief of the bureau, the claimant will be required to prove that such person was an officer or agent of the United States, by the certificate of the proper executive department, or by other legal and sufficient evidence.

XXIII.—EVIDENCE, (DOCUMENTARY.)

The records, papers, or documents from an executive department which may be offered in evidence by claimant must be those which have been transmitted to the court under a regular call for the same, or otherwise they must be duly certified and authenticated pursuant to the acts of Congress in such cases made and provided. And all such papers must be filed with the clerk before being printed.

XXIV.—EVIDENCE, (DUCES TECUM.)

The court may, at the instance of the solicitor, grant a rule upon any claimant, his agent or attorney, to produce in court, or before any commissioner, any letters, papers, deeds, documents, or other writings in his possession, or subject to his control, in any way relating to said claim; and any claimant, his agent or attorney, who shall, after due notice, refuse to produce such letters, papers, deeds, documents, or other writings, when in his power to do so, shall be subject to attachment for contempt of such order; and, persisting in such refusal, the court will direct the petition to be dismissed.

XXV.—EVIDENCE, (WITNESSES.)

If the witness, having been duly summoned and his fees tendered him, shall fail or refuse to appear and testify before any commissioner, a rule upon him shall be issued, on motion, to show cause why a fine should not be imposed upon him; and if he fail to show sufficient cause, he shall be fined not exceeding one hundred dollars.

XXVI.—EVIDENCE, (OATHS, &C.)

All witnesses shall be sworn or affirmed, before any questions are put to them, to tell the truth, the whole truth, and nothing but the truth, relative to the cause in which they are to testify; and each witness shall then state his name, his occupation, his age, if under twenty-one years, his place of residence for the

past year; whether he has any interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, he is related to the claimant. At the conclusion of the deposition, the witness shall state whether he knows of any other matter relative to the claim in question; and if he do, he shall state it. The testimony of the witness when completed shall be read over to him by the commissioner, and be signed by him in the presence of the commissioner.

XXVII.—EVIDENCE, (DEPOSITION.)

The commissioner shall state, in the caption of the deposition, the cause in which it was taken, the place where taken, the name of the witness, the party by whom called, the date, and the names of the parties and counsel present. And in the body of the deposition shall also be shown by whom the witness was examined and cross-examined.

XXVIII.—EVIDENCE, (DEPOSITION.)

In his return the commissioner shall show that the deposition was taken under competent authority; that the witness was properly sworn or affirmed; and that the answers were taken down by the commissioner, and read over to and signed by the witness.*

XXIX.—EVIDENCE, (DEPOSITION.)

The commissioner shall inclose the commission, depositions, and exhibits, if any, in a packet under his seal, and direct the same to the clerk at Washington, and deposit the packet in the post office, or in an express office, or he may transmit the same by a messenger, whose name shall be by him indorsed upon the packet.

XXX.—EVIDENCE, (COMMISSIONERS' FEES.)

The commissioner shall not be obliged to certify and forward the depositions taken for either party until his fees for the taking of the same, and the postage, shall have been paid or tendered

* *Catharine Martin* v. *The United States.* (C. Cls. R., vol. III, p. 384.)

PER CURIAM: "A commissioner should so connect the sheets of a deposition that they could not be tampered with, and should return them sealed together, so that the unbroken seal would be conclusive proof in their favor. He should sign each sheet, and make the witness sign each sheet, and generally he should spare no pains to return to the court the exact evidence he has taken."

to him by the party at whose instance the commission issued, which fees shall be such as are now, or may hereafter be, prescribed by Congress for the performance of similar duties by commissioners; and the fees of witnesses shall also be such as are now, or may hereafter be, prescribed by Congress, and shall be paid by the party at whose instance the witnesses appear.

XXXI.—EVIDENCE, (DEPOSITIONS.)

Depositions shall be taken by oral examination, or they may, with consent of the parties or under an order of the court, or by order of a judge in vacation, be taken by written interrogatories.

XXXII.—EVIDENCE, (INTERROGATORIES.)

Where it is proposed to take depositions upon written interrogatories, they shall be filed at least fifteen days before the issuing of the rule, and notice given of the same, to enable the opposite party to file cross-interrogatories.

XXXIII.—EVIDENCE, (ORAL EXAMINATION.)

Where a deposition is taken by oral examination, the questions propounded to the witness shall not be written down in the deposition, but the testimony shall be taken in the form of narrative, and, as nearly as can be, in the words of the witness. But where a question is specially objected to as illegal in form or substance, it shall be written down, and the objection noted by the commissioner. And any question asked upon cross-examination, or re-examination, and the answer thereto, shall be written down, if requested by the party interrogating the witness.

XXXIV.—EVIDENCE, (INTERROGATORIES.)

Where a deposition is taken upon written interrogatories filed, neither the solicitor for the United States nor the claimant, his agent, attorney, or any other person, shall be present at the examination of such witness, which fact shall be certified by the commissioner taking the deposition. The commissioner shall, in such cases, propound the interrogatories, and cross-interrogatories, if any, to the witness in their order, and reduce his answer to writing as nearly as practicable in the precise words of the witness.

XXXV.—EVIDENCE, (OBJECTIONS.)

All objections to the notice, or the form and manner of taking or returning the testimony, shall be made in writing, and filed within thirty days after notice of the filing of any deposition, or they will be considered as waived; and no other objections to the deposition will be considered on the hearing of the cause than such as would be available in a court of common law if the witness were produced for examination in court.

XXXVI.—EVIDENCE, (ORDER.)

When a petition is filed the clerk shall enter, as of course, an order for taking testimony.

XXXVII.—BRIEFS, FILING.

The brief of the claimant shall be filed, or a copy delivered to the solicitor, at least thirty days before the hearing of the cause.

XXXVIII.—BRIEFS, (REQUISITES.)

The brief shall contain: 1st. The style of the suit, embracing the names of all the parties, upon what founded, and how the cause was brought into court—whether by original petition, or was referred by one of the houses of Congress. 2d. A succinct history of the case, embracing all the leading facts upon which the claim is founded. 3d. An epitome or condensed statement of the evidence adduced by the claimant, with a reference to the pages of the record upon which it is printed. 4th. The argument on the facts. 5th. The argument on matters of law.

Where authorities are referred to in the brief, the principle in support of which they are cited shall be stated, or the syllabus or a short extract shall be quoted.

The brief of the Attorney General will conform, as nearly as the circumstances of the case will admit, to the form prescribed for the brief of the claimant, and shall, in the statement or history of the case, specify wherein his view of the facts differs from that contained in plaintiff's brief. The Attorney General's brief shall be filed within twenty days after receiving that of the claimant, unless the time be extended by the court upon cause shown.

On the argument of a motion or demurrer the briefs will be confined to the points of laws arising in the case, a synopsis of the argument, and a citation of the authorities.

XXXIX.—Items waived.

All items of claim not specified in the brief will be considered as waived.

XL.—Printing.

The testimony and briefs shall be printed, and furnished to the judges at least one day before the hearing of the case. In all cases where the amount claimed exceeds three thousand dollars, each party shall be at the expense of his own printing. In all cases under that amount the printing shall be done, as heretofore, under the direction of the clerk. The printed papers required by these rules shall be in small pica type, and in pages known to printers as royal octavo, and the style and number of the case shall be prefixed to all printed papers and to records of evidence. A proper index of the contents and page shall also be prefixed.

XLI.—Notices, Time of.

When notice is to be given by the Attorney General to a claimant or his attorney residing in a Territory, or in a State on the Pacific, of anything done or to be done in any other State, or in the District of Columbia, double time shall be allowed; and also when notice is to be given to the Attorney General by any claimant or his attorney of anything done or to be done in a Territory, or in a State on the Pacific.

XLII.—Notices, (Clerk.)

Whenever a notice is required to be given by these rules by any other person than by the parties, it shall be the duty of the clerk to send such notice by mail as soon as practicable after the paper requiring such notice shall have been filed in his office.

XLIII.—Notices, Proof of.

The clerk's entry on the docket of notice sent shall be *prima facie* evidence of the service of the notice.

XLIV.—Time.

In the computation of time mentioned in these rules the day of the service of any notice shall be excluded, and the day on which the party is required to appear, or on which an act is required to be done, shall be included.

XLV.—Non Pros. and Discontinuance.

If the claimant neglect for six months after issue joined to proceed thereon, the defendants may give notice of a motion to dismiss the petition, returnable in not less than sixty days, on the first Monday of any month during the term.

In vacation, a claimant, with the approval of a judge of the court, may discontinue a suit pending by a writing filed of record, signed by himself or his attorney of record; and thereupon he shall be entitled to withdraw any papers filed therein, by filing a descriptive list thereof with the clerk. But this rule shall not apply to any case in which fraud is charged, or a set-off pleaded by the United States.

XLVI.—Motions.

All motions submitted to the court shall be in writing, with the style and number of the case to which the motion relates, and signed by the counsel submitting the same; and in no case shall the clerk be required to enter the motion unless this rule be complied with.

A judge will attend at the court room, at 10½ o'clock a. m., of every court day, except Monday, to hear motions. All motions must be heard in the first instance before a single judge, except that in cases of importance or doubt he may direct the hearing to be before the court sitting in banc, and then they will go upon the law docket.

Applications for rules, orders relative to evidence, calls upon the executive departments, motions relating to the trial list or day docket, must be thus submitted to the single judge in the first instance. After the court sitting in banc take up the day docket, the time of the court will be given exclusively to the trial of cases. A case not then ready will go off for the day, and a motion for postponement must be heard by a single judge on the following morning; or the case will go upon the law docket and the motion be heard on the following Monday, as the court may direct.

XLVII.—Evidence, (Witness to be produced before Court.)

The court will reserve the right to remand any case to the docket and order a witness or a claimant to be produced before the court, or one of the judges thereof, and to be re-examined. But the claimant may be produced in the first instance before

the court or one of the judges at chambers, in vacation, and his testimony be thus taken, instead of before a commissioner, and such an examination will be a sufficient compliance with this rule.

XLVIII.—EVIDENCE, (FOREIGN DEPOSITIONS.)

Where it is proposed to take depositions in any foreign country they must be taken upon written interrogatories in the manner provided by rule XXXII of the court; and if the moving party be the claimant at the time of filing his interrogatories, he must also file a full and detailed statement of the testimony expected to be given by the witnesses respectively; and thereupon a special commission will be issued by the court, (or by the Chief Justice or one of the judges during vacation,) to the consul or vice-consul of the United States at the place designated by the moving party. The taking of such depositions and manner of proceeding by the commission and parties shall be subject to rules XVI, XXVIII, XXIX, XXX, XXXIV, and XXXV of this court.

XLIX.—APPEALS.

All applications for and appeal to the Supreme Court of the United States from any judgment or decree of this court which shall hereafter be rendered or made shall be in writing, and be signed by the claimant or his attorney of record, if the appeal be on his behalf; or, if taken by the United States, shall be signed by the Attorney General or his Assistant.

L.—APPEAL IN VACATION.

Whenever such application for an appeal is made in vacation, the same shall be filed with the clerk of this court, and the date of filing the same shall be by him indorsed upon and noted upon the record; and such filing shall be deemed the date of the application for an appeal.

Regulations prescribed by the Supreme Court of the United States, at December term, 1865, under which appeals may be taken from the Court of Claims to said Supreme Court.

RULE I.

In all cases hereafter decided in the Court of Claims in which, by the act of Congress, such appeals are allowable, they shall

be heard in the Supreme Court upon the following record, and none other:

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. A finding of the facts in the case by the said Court of Claims, and the conclusions of law on said facts on which the court founds its judgment or decree. The finding of the facts and the conclusion of law to be stated separately, and certified to this court as part of the record.

The facts so found are to be the ultimate facts or propositions which the evidence shall establish in the nature of a special verdict, and not the evidence on which these ultimate facts are founded. (See *Burr* vs. *Des Moines Co.*, 1 Wallace, 99.)

RULE II.

In all cases in which judgments or decrees have heretofore been rendered, when either party is by law entitled to an appeal, the party desiring it shall make application to the Court of Claims by petition for the allowance of such appeal. Said petition shall contain a distinct specification of the errors alleged to have been committed by said court in its rulings, judgment, or decree in the case. The court shall, if the specification of alleged error be correctly and accurately stated, certify the same, or may certify such alterations and modifications of the points decided and alleged for error as, in the judgment of said court, shall distinctly, fully, and fairly present the points decided by the court. This, with the transcript mentioned in Rule 1, (except the statement of facts and law therein mentioned,) shall constitute the record on which those cases shall be heard in the Supreme Court.

RULE III.

In all cases an order of allowance of appeal by the Court of Claims, or the Chief Justice thereof in vacation, is essential, and the limitation of time for granting such appeal shall cease to run from the time an application is made for the allowance of appeal.

ACTS OF CONGRESS

ESTABLISHING

THE COURT OF CLAIMS

AND

IN AMENDMENT THEREOF.

Chap. CXXII, p. 612, vol. X, Statutes at Large.

AN ACT to establish a court for the investigation of claims against the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court shall be established, to be called a Court of Claims, to consist of three judges, to be appointed by the President, by and with the advice and consent of the Senate, and to hold their offices during good behavior; and the said court shall hear and determine all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States, which may be suggested to it by a petition filed therein; and also all claims which may be referred to said court by either house of Congress. It shall be the duty of the claimant in all cases to set forth a full statement of the claim, and of the action thereon in Congress, or by any of the departments, if such action has been had; specifying also what person or persons are owners thereof or interested therein, and when and upon what consideration such person or persons became so interested. Each of the said judges shall receive a compensation of four thousand dollars per annum, payable quarterly, from the treasury of the United States, and shall take an oath to support the Constitution of the United States, and discharge faithfully the duties of his office.

Court of Claims established.

Jurisdiction.

Statement of claims to be made.

Compensation and oath of judges.

SEC. 2. *And be it further enacted*, That a solicitor for the United States, to represent the government before said court, shall be appointed by the President, by and with the advice and consent of the Senate. It shall be the duty of said solicitor to prepare all cases on the part of the government for

United States solicitor in said court to be appointed.

His duties.

hearing before said court, and to argue the same when prepared; to cause testimony to be taken when necessary to secure the interest of the United States; to prepare forms, file interrogatories, and superintend the taking of testimony, in the manner prescribed by said court; and generally to render such service as may be required of him from time to time in the discharge of the duties of his office.

His oath and pay. Said solicitor shall be sworn to faithful discharge of the duties of his office, in the manner prescribed for the qualifications of the judges in the first section of this act; and he shall receive a compensation of three thousand five hundred dollars per annum for his services, to be paid quarterly from the treasury of the United States.

Rules and regulations. SEC. 3. *And be it further enacted*, That the said court shall have authority to establish rules and regulations for its government; to appoint commissioners to take testimony to be used in the investigation of claims that may come before it; to prescribe the fees they shall receive for their services; and to issue commissions for the taking of such testimony, whether the same shall be taken at the instance of the claimant or of the United States; and also to issue subpœnas to require the attendance of witnesses in order to be examined before such commissioners; which subpœnas shall have the same force as if issued from a district court of the United States, and compliance therewith shall be compelled under such rules and orders as the court hereby created shall establish. When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when taken at the instance of the government, such fees, together with all postage incurred by the solicitor aforesaid in his official capacity, shall be paid out of the contingent fund provided for said court. In all cases, when it can be conveniently done, the testimony shall be taken in the county where the deponent resides; and the commissioner taking the same is hereby authorized and required to administer an oath or affirmation to the witnesses brought before him for examination.

Commissioners to take testimony.

Subpœnas.

Depositions.

Court may refuse to issue commissions in certain cases. SEC. 4. *And be it further enacted*, That in all cases where it shall appear to the courts that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not be the duty of the court to authorize the taking of any testimony in the case until the same shall have been reported by them to Congress, as is hereinafter provided:

Provided, however, That if Congress shall, in such case, fail to confirm the opinion of said board, they shall proceed to take the testimony in such case.

Cross-examination.

SEC. 5. *And be it further enacted*, That in taking testimony to be used in support of any claim before said court, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded to the claimant in cases where testimony is taken on behalf of the United States under like regulations.

Penalty for false swearing.

SEC. 6. *And be it further enacted*, That if any person shall knowingly and willfully swear falsely before said court, or before any person or persons commissioned by them, or authorized by this act to take testimony in a case pending before said court at the time of taking said oath, or in a case thereafter to be submitted to said court, such person shall be deemed guilty of perjury, and on conviction thereof shall be subjected to the same pains, penalties, and disabilities which now are, or shall be hereafter, by law prescribed for willful and corrupt perjury.

Record to be kept and report to be made.

SEC. 7. *And be it further enacted*, That said court shall keep a record of their proceedings, and shall, at the commencement of each session of Congress, and at the commencement of each month during the session of Congress, report to Congress the cases upon which they shall have finally acted, stating in each the material facts which they find established by the evidence, with their opinion in the case, and the reasons upon which such opinion is founded. Any judge who may dissent from the opinion of the majority shall append his reasons for such dissent to the report, and such reports, together with the briefs of the solicitor and of the claimant, which shall accompany the report, upon being made to either house of Congress, shall be printed in the same manner as other public documents. And said court shall prepare a bill or bills in those cases which shall have received the favorable decision thereof, in such form as, if enacted, will carry the same into effect. And two or more cases may be embraced in the same bill where the separate amount proposed to be allowed in each case shall be less than one thousand dollars. And the said court shall transmit with said reports the testimony in each case, whether the same shall receive the favorable or adverse action of said court.

Dissenting opinions.

Reports to be printed.

Court to prepare bills.

Claims may be consolidated.

Testimony to be reported.

Reports and bills to be continued from one session to another, and from one Congress to another.

SEC. 8. *And be it further enacted*, That said reports and the bills reported as aforesaid shall, if not finally acted upon during the session of Congress to which the said reports are made, be continued

from session to session, and from Congress to Congress, until the same shall be finally acted upon; and the consideration of said reports and bills shall, at the subsequent session of Congress, be resumed, and the said reports and bills be proceeded with in the same manner as though finally acted upon at the session when presented.

Adverse reports.

SEC. 9. *And be it further enacted*, That the claims reported upon adversely shall be placed upon the calendar when reported, and if the decision of said court shall be confirmed by Congress, said decision shall be conclusive; and the said court shall not at any subsequent period consider said claims, unless such reasons shall be presented to said court as, by the rules of common law or chancery, in suits between individuals, would furnish sufficient ground for granting a new trial.

Rooms to be assigned to said court.

SEC. 10. *And be it further enacted*, That it shall be the duty of the Speaker of the House of Representatives, within a reasonable time after the passage of this act, to appropriate such rooms in the Capitol at Washington, for the use of said court, as may be necessary for their accommodation, unless it shall appear to the Speaker that such rooms cannot be appropriated without interfering with the business of Congress; and in that event the said court shall procure, at the city of Washington, such rooms as may be necessary for the convenient transaction of their business.

Court may call on departments for information.

SEC. 11. *And be it further enacted*, That said court shall have power to call upon any of the departments for any information or papers it may deem necessary, and have the use of all recorded and printed reports made by the committees of each house, when deemed to be necessary in the prosecution of the duties assigned by this act. Said court shall appoint a chief clerk, whose salary shall be two thousand dollars per annum, and an assistant clerk, if deemed necessary, whose salary shall be fifteen hundred dollars per annum, and a messenger, whose salary shall be eight hundred dollars per annum, to be paid quarterly at the treasury. The said clerks shall be under the direction of said court in the performance of their duties, and for misconduct or incapacity may be removed from office by it; but when so removed said board shall make report thereof, with the cause of such removal, to Congress, if in session, or at the next session of Congress. Said clerk and assistant clerk shall take an oath for the faithful discharge of their duties: *Provided*, That the head of no department shall

Chief clerk and assistant clerk.

Their salaries.

Messenger's salary.

Chief clerk and assistant clerk to take an oath.

answer any call for information or papers, if, in his opinion, it would be injurious to the public interest.

Approved February 24, 1855.

Chap. LXXXI, p. 30, vol. XI, Stat. at Large.

AN ACT to amend an act entitled "An act to establish a court for the investigation of claims against the United States," approved February twenty-fourth, eighteen hundred and fifty-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any two of the judges of the Court of Claims, authorized by the act to which this is an amendment, approved the twenty-fourth day of February, eighteen hundred and fifty-five, shall constitute a quorum, and may hold a court for the transaction of business, and the court may appoint commissioners to take testimony in the manner prescribed in said act.

Any two of the judges of the Court of Claims to be a quorum.

SEC. 2. *And be it further enacted*, That an assistant solicitor shall be appointed by the President, by and with the advice and consent of the Senate, whose duty it shall be to aid the solicitor in the performance of the duties mentioned in the said act, and shall take an oath to support the Constitution of the United States, and discharge faithfully the duties of said office; and he shall receive a salary of three thousand five hundred dollars per annum, and shall hold his office for a period of four years, unless sooner removed by the President. And the solicitor of the United States, mentioned in the act to which this is an amendment, shall have power, and he is hereby authorized, to employ a deputy, who shall receive a salary of two thousand five hundred dollars per annum, and whose duty it shall be to aid the said solicitor in the performance of the duties mentioned in said act in such way as the said solicitor shall direct.

Assistant solicitor.

Oath.

Salary.

Solicitor may appoint, &c.

Deputy.

SEC. 3. *And be it further enacted*, That the clerk of said court shall be, and he is hereby, authorized to disburse, under direction of the said court, the contingent fund which may hereafter be appropriated, from time to time, for the use of the said court: *Provided*, That he shall first give bond in such an amount, and in such form, and with such security as shall be approved by the Secretary of the Treasury: *And provided further*, That his accounts shall be settled by the proper accounting

Clerk to disburse contingent fund.

Bond.

Settlement of his accounts.

officers of the treasury in the same way that the accounts of other disbursing agents of the government are now settled. And from and after the first day of April, one thousand eight hundred and fifty-six, the salary of the said clerk shall be three thousand dollars per annum, and the salary of the assistant clerk two thousand dollars per annum.

Salary of clerk and assistant clerk,

Approved August 6, 1856.

Chap. XCII, p. 765, vol. XII, Stat. at Large.

AN ACT to amend "An act to establish a court for the investigation of claims against the United States," approved February twenty-fourth, eighteen hundred and fifty-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be appointed by the President, by and with the advice and consent of the Senate, two additional judges for the said court, to hold their offices during good behavior, who shall be qualified in the same manner, discharge the same duties, and receive the same compensation, as now provided in reference to the judges of said court; and that from the whole number of said judges the President shall in like manner appoint a chief justice for said court.

Two additional judges for the Court of Claims.

SEC. 2. *And be it further enacted*, That all petitions and bills praying or providing for the satisfaction of private claims against the government, founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States, shall, unless otherwise ordered by resolution of the house in which the same are presented or introduced, be transmitted by the Secretary of the Senate to the Clerk of the House of Representatives, with all the accompanying documents, to the court aforesaid.

All petitions and bills for private claims to be sent to the court.

SEC. 3. *And be it further enacted*, That the said court, in addition to the jurisdiction now conferred by law, shall also have jurisdiction of all set-offs, counter claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever, on the part of the government against any person making claim against the government in said court; and upon the trial of any such cause it shall hear and determine such claim or demand both for and against the government and claimant; and if upon the whole case it finds that the claimant is in-

Court to consider set-offs, &c., for the government.

If the court finds that the claimant owes the government, to render judgment therefor.

debted to the government, it shall *under* [render] judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases herein provided for. Any transcript of such judgment, filed in the clerk's office of any district or circuit courts of the United States, shall be entered upon the records of the same, and shall, *ipso facto*, become and be a judgment of such district or circuit court, and shall be enforced in like manner as other judgments therein.

Transcript of judgment to be entered in district, &c., court, and be enforced like other judgments.

SEC. 4. *And be it further enacted*, That the said Court of Claims shall hold one annual session, commencing on the first Monday in October in each year, and continuing so long as may be necessary for prompt disposition of the business of the court. The said court may prescribe rules and regulations for practice therein, and it may punish for contempt, in the manner prescribed by common law. It may appoint commissioners, and may generally exercise such powers as are necessary to carry out the powers herein granted to it. The judges, solicitors, and clerks of said court shall be admitted to the use of the congressional library, and also the law library, until a law library be provided for them. The said court may appoint a bailiff, who shall hold his office during four years, unless sooner removed by said court for cause, and who shall receive a salary of one thousand dollars, payable quarterly. The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same. Said court shall have a seal, with such device as it may order. Members of either house of Congress shall not practice in said Court of Claims.

Annual session to commence 1st Monday in October.

Rules.

Appoint commissioners.

Use of the congressional and law libraries.

Bailiff, salary.

Judges and clerks to administer oaths, &c.

Seal.

Members of Congress not to practice in Court of Claims.

SEC. 5. *And be it further enacted*, That either party may appeal to the Supreme Court of the United States from any final judgment or decree which may hereafter be rendered in any case by said court wherein the amount in controversy exceeds three thousand dollars, under such regulations as the said Supreme Court may direct: *Provided*, That such appeal shall be taken within ninety days after the rendition of such judgment or decree: *And provided further*, That when the judgment or decree will affect a class of cases, or furnish a precedent for the future action of any executive department of the government in the adjustment of such class of cases, or a constitutional question, and such facts shall be certified to by the presiding justice of the Court of Claims, the Supreme Court

Appeals to Supreme Court of United States.

When to be taken.

When appeal may be had without reference to amount in controversy.

shall entertain an appeal on behalf of the United States without regard to the amount in controversy.

Solicitor and assistants, how appointed.

SEC. 6. *And be it further enacted*, That the solicitor, assistant solicitor, and deputy solicitor of said court shall hereafter be appointed by the President, by and with the advice and consent of the Senate;

Duty.

and it shall be their duty faithfully and diligently to defend the United States in all matters and cases before said Court of Claims, and in all cases taken by appeal therefrom to the Supreme Court;

No fees but salary.

and no other fee or compensation than the salary of said solicitor, and assistant and deputy solicitors, shall hereafter, in any case, be paid to either of them, and no fee or compensation for services in either the Supreme Court or Court of Claims shall hereafter be allowed or paid in any case by the United States.

Claims sustained, how paid.

SEC. 7. *And be it further enacted*, That in all cases of final judgments by said court, or on appeal by the said Supreme Court where the same shall be affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of said Court of Claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court. And in cases where the judgment appealed from is in favor of said claimant, or the same is affirmed by the said Supreme Court, interest thereon at rate of five per centum shall be allowed from the date of its presentation to the Secretary of the Treasury for payment as aforesaid, but no interest shall be allowed subsequent to the affirmance, unless presented for payment to the Secretary of the Treasury as aforesaid: *Provided*, That no interest shall be allowed on any claim up to the time of the rendition of the judgment by said Court of Claims, unless upon a contract expressly stipulating for the payment of interest; and it shall be the duty of the Secretary of the Treasury, at the commencement of each Congress, to include in his report *or* [a] statement of all sums paid at the treasury on such judgments, together with the names of the parties in whose favor the same were allowed: *And it is further provided*, That such payments shall be a full discharge to the United States of all claim or demand touching any of the matters involved in the controversy: *And provided further*, That any final judgment rendered against the claimant on any claim prosecuted

Interest.

Payments to be a full discharge and bar all further claims.

as aforesaid shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

Claimant may be examined on oath. Proceedings.

SEC. 8. *And be it further enacted*, That it shall be lawful for said court, at the instance of the solicitor for the United States, to make an order in any case pending in said court, directing that the claimant or claimants in such case, or any one or more of them, shall appear, upon reasonable notice, before any commissioner of said court, and be examined on oath or affirmation touching any or all matters pertaining to said claim. And the examination of such claimant or claimants shall be reduced to writing by the said commissioner, and be returned to and filed in said court, and may, at the discretion of the solicitor for the United States, be read and used as evidence on the trial of said cause. And if any claimant or claimants, after such order has been made, and due and reasonable notice thereof given to him or them, shall fail to appear or shall refuse to testify or answer fully as to all matters within his knowledge material to the issue, the said court may, in its discretion, order that the said cause shall not be brought forward for trial until the said claimant or claimants shall have fully complied with the order of said court in the premises.

Examination to be reduced to writing.

If claimants neglect or refuse.

Court not to have jurisdiction of certain claims.

SEC. 9. *And be it further enacted*, That the jurisdiction of the said court shall not extend to or include any claim against the government not pending in said court on the first day of December, anno Domini eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

Claims to be filed in court within six years.

SEC. 10. *And be it further enacted*, That every claim against the United States, cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement of the claim be filed in the court or transmitted to it under the provisions of this act within six years after the claim first accrues: *Provided*, That claims which have accrued six years before the passage of this act shall not be barred if the petition be filed in the court or transmitted as aforesaid wthin three years after the passage of this act: *And provided furtner*, That the claims of married women first accrued during marriage, of persons under the age of twenty-one years first accruing during minority, and of idiots, lunatics, insane persons, and persons beyond seas at the time the claim accrued, entitled to the

Proviso.

Persons under disability.

claim, shall not be barred if the petition be filed in the court, or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

Attempts to practice any fraud upon the United States, how punished.

SEC. 11. *And be it further enacted*, That any person or persons who shall corruptly practice, or attempt to practice, any fraud against the United States in the proof, statement, establishment, or allowance of any claim, or any part of any claim, against the United States, shall *ipso facto* forfeit the same to the government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced, or attempted to be practiced, and thereupon give judgment that such claim is forfeited to the government, and that the claimant be forever barred from prosecuting the same. Appeals may be taken from the Court of Claims to the Supreme Court in all such cases, on all questions of law, in the manner herein provided for appeals in other cases.

Appeals.

Petitions to court to be verified by affidavit.

SEC. 12. *And be it further enacted*, That any petition filed under this act shall be verified by the affidavit of the claimant, his agent or attorney, stating that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true: *Provided, however*, That in order to authorize the said court to render a judgment in favor of any claimant, if a citizen of the United States, it shall be set forth in the petition that the claimant, and the original and every prior owner thereof where the claim has been assigned, has at all times borne true allegiance to the government of the United States, and whether a citizen or not, that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government, which allegations may be traversed by the government; and if on the trial such issue shall be decided against the claimant, his petition shall be dismissed.

Proviso.

Repeal of inconsistent laws.

SEC. 13. *And be it further enacted*, That all laws and parts [of laws] inconsistent with the provisions of this act are hereby repealed.

Money not be paid out for claims until appropriated upon estimates.

SEC. 14. *And be it further enacted*, That no money shall be paid out of the treasury for any claim passed upon by the Court of Claims till after an

appropriation therefor shall be estimated for by the Secretary of the Treasury.

Approved March 3, 1863.

Chap. CXX, p. 820, vol. XII, Stat. at Large.

AN ACT to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the Secretary of the Treasury, from and after the passage of this act, as he shall from time to time see fit, to appoint a special agent or agents to receive and collect all abandoned or captured property in any State or Territory, or any portion of any State or Territory, of the United States, designated as in insurrection against the lawful government of the United States by the proclamation of the President of July 1, 1862: *Provided*, That such property shall not include any kind or description which has been used, or which was intended to be used, for waging or carrying on war against the United States, such as arms, ordnance, ships, steamboats, or other watercraft, and their furniture, forage, military supplies, or munitions of war.

Special agents to receive and collect abandoned or captured property in certain States.

Proviso.

SEC. 2. *And be it further enacted*, That any part of the goods or property received or collected by such agent or agents may be appropriated to public use on due appraisement and certificate thereof, or forwarded to any place of sale within the loyal States, as the public interests may require; and all sales of such property shall be at auction to the highest bidder, and the proceeds thereof shall be paid into the treasury of the United States.

Such property may be appropriated to public use, or sold at public auction in loyal States.

SEC. 3. *And be it further enacted*, That the Secretary of the Treasury may require the special agents appointed under this act to give a bond, with such securities and in such amount as he shall deem necessary, and to require the increase of said amounts and the strengthening of said security as circumstances may demand; and he shall also cause a book or books of accounts to be kept, showing from whom such property was received, the cost of transportation, and proceeds of the sale thereof. And any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the

Bond of special agents.

Books to be kept.

Owners of such property may sue for proceeds in Court of Claims.

rebellion, prefer his claim to the proceeds thereof in the Court of Claims; and on proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of such proceeds, after the deduction of any purchase-money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof.

Upon what proof may recover.

Property coming into loyal States from States in insurrection, except through special agents, to be confiscated.

SEC. 4. *And be it further enacted*, That all property coming into any of the United States not declared in insurrection as aforesaid from within any of the States declared in insurrection, through or by any other person than an agent duly appointed under the provisions of this act, or under a lawful clearance by the proper officer of the Treasury Department, shall be confiscated to the use of the government of the United States. And the proceedings for the condemnation and sale of any such property shall be instituted and conducted under the direction of the Secretary of the Treasury, in the mode prescribed by the eighty-ninth and ninetieth sections of the act of March 2, 1799, entitled "An act to regulate the collection of duties on imports and tonnage." And any agent or agents, person or persons, by or through whom such property shall come within the lines of the United States unlawfully as aforesaid, shall be judged guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned for any time not exceeding one year, or both, at the discretion of the court. And the fines, penalties, and forfeitures accruing under this act may be mitigated or remitted in the mode prescribed by the act of March 3, 1797, or in such manner, in special cases, as the Secretary of the Treasury may prescribe.

Proceedings for condemnation and sale.

1799, ch. 22, §§ 89, 90, vol. 1, p. 695.

Persons through whom property comes unlawfully to be punished.

Remission of penalties.

1797, ch. 13, vol. 1, p. 506.

Pay of special agents at ports opened in States in insurrection.

SEC. 5. *And be it further enacted*, That the fifth section of the "Act to further provide for the collection of the revenue upon the northern, northeastern, and northwestern frontiers, and for other purposes," approved July 14, 1862, shall be so construed as to allow the temporary officers which have been or may be appointed at ports which have been or may be opened or established in States declared to be in insurrection by the proclamation of the President on the 1st of July, 1862, the same compensation which by law is allowed to government officers of the same position, or the ordinary compensation of special agents, as the Secretary of the Treasury may determine.

1862, ch. 169, § 5, vol. XII, p. 512.

SEC. 6. *And be it further enacted*, That it shall be the duty of every officer or private of the regular or volunteer forces of the United States, or any officer, sailor, or marine in the naval service of the United States upon the inland waters of the United States, who may take or receive any such abandoned property, or cotton, sugar, rice, or tobacco, from persons in such insurrectionary districts, or have it under his control, to turn the same over to an agent appointed as aforesaid, who shall give a receipt therefor; and in case he shall refuse or neglect so to do, he shall be tried by a court-martial, and shall be dismissed from the service, or, if an officer, reduced to the ranks, or suffer such other punishment as said court shall order, with the approval of the President of the United States.

Officers and soldiers receiving any such property, or cotton, &c., to turn the same over to special agents.

Penalty for not so doing.

SEC. 7. *And be it further enacted*, That none of the provisions of this act shall apply to any lawful maritime prize by the naval forces of the United States.

This not to apply to lawful maritime prizes.

Approved March 12, 1863.

Chap. CCXL, p. 381, vol. XIII, Stat. at Large.

AN ACT to restrict the jurisdiction of the Court of Claims, and to provide for the payment of certain demands for quartermasters' stores and subsistence supplies furnished to the army of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the jurisdiction of the Court of Claims shall not extend to or include any claim against the United States growing out of the destruction or appropriation of, or damage to, property by the army or navy, or any part of the army or navy, engaged in the suppression of the rebellion, from the commencement to the close thereof.

Jurisdiction of Court of Claims not to extend to certain claims.

SEC. 2. *And be it further enacted*, That all claims of loyal citizens in States not in rebellion for quartermasters' stores actually furnished to the army of the United States, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Quartermaster General of the United States, accompanied with such proofs as each claimant can present of the facts in his case; and it shall be the duty of the Quartermaster General to cause such claim to be examined, and, if convinced that it is just, and of the loyalty of the claimant, and that the stores have been actually

Claims of certain loyal citizens for quartermasters' stores, how to be settled.

received or taken for the use of and used by said army, then to report each case to the Third Auditor of the Treasury, with a recommendation for settlement.

Claims of certain loyal citizens for subsistence furnished to the army, how to be settled.

SEC. 3. *And be it further enacted*, That all claims of loyal citizens in States not in rebellion for subsistence actually furnished to said army, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Commissary General of Subsistence, accompanied with such proofs as each claimant may have to offer; and it shall be the duty of the Commissary General of Subsistence to cause each claim to be examined, and, if convinced that it is just, and of the loyalty of the claimant, and that the stores have been actually received or taken for the use of and used by said army, then to report each case for payment to the Third Auditor of the Treasury, with a recommendation for settlement.

Approved July 4, 1864.

Chap. XIX, p. 9, vol. XIV, Stat. at Large.

AN ACT in relation to the Court of Claims.

Repealing sec. 14 of act of 1863.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fourteenth section of an act approved the third day of March, anno Domini eighteen hundred and sixty-three, entitled "An act to amend an act to establish a court for the investigation of claims against the United States," approved February twenty-fourth, eighteen hundred and fifty-five, be, and the same is hereby, repealed; and from the final judgment, or decree, in all cases heretofore decided by the Court of Claims, of the character mentioned in the fifth section of said act of March third, eighteen hundred and sixty-three,

Appeal to the Supreme Court of U. S. allowed in certain cases.

an appeal shall be allowed to the Supreme Court of the United States at any time within ninety days after the passage of this act, except in such cases where the amounts found due by said court have been paid at the treasury.*

---

* SUPREME COURT OF THE UNITED STATES.—No. 160.—March 10, 1865.—*David Gordon* and *Sarah Gordon*, administrators of David Fisher, deceased, appellants, vs. *The United States.*

Chief Justice CHASE delivered the opinion of the court:

The court has fully considered the able and instructive arguments of counsel upon the question of jurisdiction, which pre-

Term of Court of Claims changed.

SEC. 2. *And be it further enacted*, That the regular session of the Court of Claims shall hereafter commence on the first Monday of December in each year.

Clerk of the court at the end of each term to supply copies, &c.

SEC. 3. *And be it further enacted*, That, at the end of every term of the Court of Claims, the clerk of said court transmit a copy of the decisions thereof to the heads of departments; to the Solicitor, Comptrollers, and Auditors of the Treasury; to the Commissioners of the General Land Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with adjusting claims against the United States.

Approved March 17, 1866.

Chap. LXXV, p. 44, vol. XIV, Stat. at Large.

AN ACT to extend the jurisdiction of the Court of Claims.

Court of Claims to hear and determine the claims of paymasters, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims shall have jurisdiction to hear and determine the claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of losses by capture or otherwise while in the line of his duty, of government funds, vouchers, records, and papers in his charge, and for which such officer was and is held responsible: *Provided*, That an appeal may be taken to the Supreme Court, as in other cases.

Decree.

SEC. 2. *And be it further enacted*, That whenever said court shall have ascertained the facts of any such loss to have been without fault or neglect on the part of any such officer, it shall make a decree, setting forth the amount thereof, upon which the

---

sents itself at the threshold of this cause, and has found itself constrained to the conclusion that under the Constitution it can exercise no appellate jurisdiction over the decisions of the Court of Claims.

We think that the authority given to the head of an executive department, by necessary implication, in the 14th section of the amended Court of Claims act, to revise all the decisions of this court requiring payment of money, denies to it the judicial power from the exercise of which appeals can be taken to this court.

The reasons which necessitate this conclusion may be more fully announced hereafter. At present we restrict ourselves to this general statement, and to the direction that the case be dismissed for want of jurisdiction.

Messrs. Justices MILLER and FIELD dissented.

proper accounting officers of the treasury shall allow to such officer the amount so decreed as a credit in the settlement of his accounts.

Approved May 9, 1866.

Public resolution No. 50, vol. XIV, Stat. at Large, p. 360.

JOINT RESOLUTION to extend to the counties of Berkeley and Jefferson, of West Virginia, the provisions of the act approved July fourth, eighteen hundred and sixty-four, entitled "An act to restrict the jurisdiction of the Court of Claims, and to provide for the payment of certain demands for quartermasters' stores and subsistence supplies furnished to the army of the United States."

Extending the act of July 4, 1864, to the counties of Berkeley and Jefferson, in West Virginia.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress of July fourth, eighteen hundred and sixty-four, entitled "An act to restrict the jurisdiction of the Court of Claims, and for other purposes," be, and the same are hereby, construed to extend to the counties of Berkeley and Jefferson, of the State of West Virginia.

Approved June 18, 1866.

Chap. LVII, p. 397, vol. XIV, Stat. at Large.

1864, ch. 240, vol. XIII, p. 381.

AN ACT to declare the sense of an act entitled "An act to restrict the jurisdiction of the Court of Claims, and to provide for the payment of certain demands for quartermasters' stores and subsistence supplies furnished to the army of the United States."

Claims for supplies, &c., taken or used by the Union troops, or for injuries caused by them in a State, &c., declared in insurrection or, &c., not to be entertained by the Court of Claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of chapter two hundred and forty of the acts of the thirty-eighth Congress, first session, approved July fourth, eighteen hundred and sixty-four, shall not be construed to authorize the settlement of any claim for supplies or stores taken or furnished for the use of, or used by, the armies of the United States, nor for the occupation of, or injury to, real estate, nor for the consumption, appropriation, or destruction of, or damage to, personal property, by the military authorities or troops of the United States, where such claim originated during the war for the suppression of the southern rebellion, in a State, or part of a State, declared in insurrection by the proc-

lamation of the President of the United States, dated July first, eighteen hundred and sixty-two, or in a State which by an ordinance of secession attempted to withdraw from the United States government: *Provided*, That nothing herein contained shall repeal or modify the effect of any act or joint resolution extending the provisions of the said act of July fourth, eighteen hundred and sixty-four, to the loyal citizens of the State of Tennessee, or of the State of West Virginia, or any county therein. Vol. XII, p. 1266. Tennessee and West Virginia excepted.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate pro tempore.

Indorsed by the President: "Received February 9, 1867."

[NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.]

Chap. CLXVI, p. 457, vol. XIV, Stat. at Large.

Section second of the general appropriation act, approved March 2, 1867.

SEC. 2. *And be it further enacted*, That the proviso contained in the third section of chapter two hundred and ten of the act of July second, eighteen hundred and sixty-four, shall be construed to embrace all suits to which the United States shall be a party in the Court of Claims—either plaintiff or defendant.

See Stat. at Large, vol. XIII, p. 351.

Proviso contained in the third section of chapter two hundred and two of the act of July 2, 1864, referred to in the above section.

Provided, That in the courts of the United States there shall be no exclusion of any witness on account of color, nor in civil actions because he is a party to, or interested in, the issue tried.

AN ACT to provide for appeals from the Court of Claims, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an appeal to the Supreme Court of the United States shall be allowed on behalf of the United States from all the final judgments of the said Court of Claims adverse to the United States, whether such judgments shall have been rendered by virtue of the general or any special power or jurisdiction of said court under the limitations now provided by law for other cases of appeal from said court.

Appeals allowed in all final judgments adverse to the United States

SEC. 2. *And be it further enacted*, That said Court of Claims, at any time while any suit or claim is pending before or on appeal from said court, or within two years next after the final disposition of any such suit or claim, may, on motion on behalf of the United States, grant a new trial in any such suit or claim and stay the payment of any judgment therein, upon such evidence (although the same may be cumulative or other) as shall reasonably satisfy said court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.

New trial may be granted within two years.

Until an order is made staying the payment, the same to be paid as now provided.

SEC. 3. *And be it further enacted*, That whenever it shall be material in any suit or claim before any court to ascertain whether any person did or did not give any aid or comfort to the late rebellion, the claimant or party asserting the loyalty of any such person to the United States during such rebellion shall be required to prove affirmatively that such person did, during said rebellion, consistently adhere to the United States, and did give no aid or comfort to persons engaged in said rebellion; and the voluntary residence of any such person in any place where, at any time during such residence, the rebel force or organization held sway, shall be prima facie evidence that such person did give aid and comfort to said rebellion and to the persons engaged therein.

Loyalty to be proved affirmatively.

Voluntary residence under rebel sway prima facie evidence of giving "aid and comfort."

SEC. 4. *And be it further enacted*, That no plaintiff or claimant, or any person from or through whom any such plaintiff or claimant derives his alleged title, claim, or right against the United States, or any person interested in any such title, claim, or right, shall be a competent witness in the Court of Claims in supporting any such title, claim, or right, and no testimony given by such plaintiff, claimant,

No claimant to be a competent witness.

or person shall be used: *Provided*, That the United States shall, if they see cause, have the right to examine such plaintiff, claimant, or person as a witness under the regulations and with the privileges provided in section eight of the act passed March third, eighteen hundred and sixty-three, entitled "An act to amend an act to establish a court for the investigation of claims against the United States," approved February twenty-fourth, eighteen hundred and fifty-five.

Attorney General to attend to all matters in the Court of Claims.

SEC. 5. *And be it further enacted*, That from and after the first day of July, eighteen hundred and sixty-eight, the Attorney General of the United States for the time being shall, with his assistants, attend to the prosecution and defense of all matters and suits in the Court of Claims on behalf of the United States. There shall be appointed by the President, by and with the advice and consent of the Senate, two assistant Attorneys General, who shall hold their offices for four years respectively, unless sooner lawfully removed, and whose salaries shall be four thousand dollars each, per year, payable quarterly, and who shall be in lieu of the solicitor, assistant solicitor, and deputy solicitor of the Court of Claims, and of the assistant Attorney General now provided for by law; and the existing offices of solicitor, assistant solicitor, and deputy solicitor of the Court of Claims, and of assistant Attorney General, are hereby abolished from and after the first day of July, eighteen hundred and sixty-eight. The Attorney General shall have power to appoint two additional clerks of the fourth class, and one clerk at a salary not exceeding two thousand dollars, in his office.

Copy of petitions in Court of Claims to be transmitted by Attorney General to departments, &c., when having been acted upon and decided by said departments.

SEC. 6. *And be it further enacted*, That it shall also be the duty of the said Attorney General and his assistants, in all cases brought against the United States in said Court of Claims founded upon any contract, agreement, or transaction with any executive department, or any bureau, officer, or agent of such department, or where the matter or thing on which the claim is based shall have been passed upon and decided by any department, bureau, or officer intrusted by law or department regulations with the settlement and adjustment of such claims, demands, or accounts, to transmit to said department, bureau, or officer, as aforesaid, a printed copy of the petition filed by the claimant in such case, with a request that the said department, bureau, or officer to whom the same shall be so transmitted as aforesaid, will furnish to said

Facts and proof before said departments to be returned to Attorney General.

Attorney General all facts, circumstances, and evidence touching said claim as is or may be in the possession or knowledge of the said department, bureau, or officer; and it shall be the duty of the said department, bureau, or officer to whom such petition may be transmitted and such request preferred as aforesaid, without delay, and within a reasonable time, to furnish said Attorney General with a full statement of all the facts, information, and proofs which are or may be within the knowledge or in the possession of said department, bureau, or officer, relating to the claim aforesaid. Such statement shall also contain a reference to or description of all official documents or papers, if any, as may or do furnish proof of facts referred to in said statement, or that may be necessary and proper for the defense of the United States against the said claim, together with the department, office, or place where the same is kept or may be procured. And if the said claim shall have been passed upon and decided by the said department, bureau, or officer, the statement or answer to be transmitted to said Attorney General, as hereinbefore provided, shall succinctly state the reasons and principles upon which such decisions shall have been based. In all cases where such decision shall have been made upon any act of Congress, or upon any section or clause of such act, the same shall be cited specifically. And if any previous interpretation or construction shall have been given to such act, section, or clause, by the said department or bureau transmitting such statement, the same shall be set forth succinctly in said statement, and a copy of the opinion filed, if any, shall be annexed to such statement and transmitted with the same to the Attorney General aforesaid. And where any decision in the case shall have been based upon any regulation of an executive department, or where such regulation shall or may, in the opinion of the department, bureau, or officer transmitting such statement, have any bearing upon the claim in suit, the same shall be distinctly referred to and quoted in extenso in the statement trasmitted to said Attorney General: *Provided, however*, That where there shall be pending in said court more than one case, or a class of cases, the defense to which shall rest upon the same facts, circumstances, and proofs, the said department, bureau, or officer shall only be required to certify and transmit one statement of the same, and such statement shall be held to apply to all such classes of cases as

Construction of act of Congress acted upon by the departments to be transmitted to the Attorney General.

Proviso.

if made out, certified, and transmitted in each case respectively.

Head of a department may transmit to the Court of Claims claims involving disputed facts or controverted questions of law.

SEC. 7. *And be it further enacted*, That it shall and may be lawful for the head of any executive department, whenever any claim is made upon said department involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases or furnish a precedent for the future action of any executive department in the adjustment of a class of cases, without regard to the amount involved in the particular case, or where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States, to cause such claim, with all the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall be there proceeded in as if originally commenced by the voluntary action of the claimant. And the Secretary of the Treasury may, upon the certificate of any Auditor or Comptroller of the Treasury, direct any account, matter, or claim of the character, amount, or class described or limited in this section to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the said Court of Claims, for trial and adjudication: *Provided, however*, That no case shall be referred by any head of a department unless it belongs to one of the several classes of cases to which, by reason of the subject-matter and character, the said Court of Claims might, under existing laws, take jurisdiction on such voluntary action of the claimant. And all the cases mentioned in this section which shall be transmitted by the head of any executive department, or upon the certificate of any Auditor or Comptroller, shall be proceeded in as other cases pending in said court, and shall, in all respects, be subject to the same rules and regulations; and appeals from the final judgments or decrees of said court therein to the Supreme Court of the United States shall be allowed in the manner now provided by law. The amount of the final judgments or decrees in such cases so transmitted to said court, where rendered in favor of the claimants, shall in all cases be paid out of any specific appropriation applicable to the same, if any such there be; and where no such appropriation exists, the same shall be paid in the same manner as other judgments of said court.

Claims transmitted must be within the jurisdiction of the court as now established.

Appeals allowed.

No suit to be brought to the Court of Claims against an officer if same is pending in any other court.

SEC. 8. *And be it further enacted*, That no person shall file or prosecute any claim or suit in the Court of Claims, or an appeal therefrom, for or in respect to which he or any assignee of his shall have commenced and has pending any suit or process in any other court against any officer or person who, at the time of the cause of action alleged in such suit or process arose, was in respect thereto acting or professing to act, mediately or immediately, under the authority of the United States, unless such suit or process, if now pending in such other court, shall be withdrawn or dismissed within thirty days after the passage of this act.

Clerk of the Court of Claims to report to Congress at commencement of every session.

SEC. 9. *And be it further enacted*, That it shall be the duty of the clerk of the said Court of Claims to transmit to Congress, at the commencement of every December session, a full and complete statement of all the judgments rendered by the said court for the previous year, stating the amounts thereof and the parties in whose favor rendered, together with a brief synopsis of the nature of the claims upon which said judgments have been rendered.

Repeal.

SEC. 10. *And be it further enacted*, That all provisions of any act incompatible herewith be, and the same are hereby, repealed.

Approved June 25, 1868.

AN ACT regulating judicial proceedings in certain cases, for the protection of officers and agents of the government, and for the better defense of the treasury against unlawful claims.

Act July 28, 1866 extended, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the provisions of section eight of the act of July twenty-eight, eighteen hundred and sixty-six, entitled "An act to protect the revenue, and for other purposes," and the forms and modes by that section and the twelfth section of the act of March three, eighteen hundred and sixty-three, therein referred to, prescribed for prosecuting suits, withholding executions, and paying judgments against officers of the United States, or other persons engaged in executing the acts relative to captured and abandoned property, shall extend and be applied to all suits and proceedings (except those in behalf of the United States) which have been brought, or may hereafter be brought, against any officer or agent of the government, civil or military,

for acts done during the rebellion while acting by virtue or under color of his office or employment; and every defendant in such suit or proceeding having made full defense thereto, and having notified the Attorney General of the United States to appear and defend the same, shall be entitled to the full benefit and protection provided in said section for officers and agents of the government engaged in the collection of the public revenue; and any defendant being aggrieved by any order or direction, ruling, or judgment of any court made or had in any such proceeding, may except thereto and appeal therefrom to the Supreme Court of the United States, and have the questions arising there heard and determined.

No action in the name of an alien to be maintained in the courts of the Unit'd States.

SEC. 2. *And be it further enacted*, That no action or suit shall be maintained in any court of the United States, or of any State thereof, in the name or in the behalf or interest of any alien, against the United States, or any person, for or on account of any act done or omitted to be done by such person as an officer or agent of the United States, in the administration of the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," approved March twelve, eighteen hundred and sixty-three, or of the act of Congress entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection," approved July two, eighteen hundred and sixty-four, or in virtue or under color of the acts of Congress aforesaid, or any other acts of Congress relative to the said insurrectionary States, or to persons or property therein; and to any action or suit which may have been heretofore, or shall hereafter be, instituted by any alien against the United States, or any such person as aforesaid, on account of any act done or omitted to be done as aforesaid, the defendant may and shall plead or allege in bar thereof, that such act was done, or omitted to be done, in the administration of one of the acts of Congress aforesaid, or in virtue or under color thereof; and such plea or allegation, if the fact be sustained by the proof, shall be, and shall be deemed and adjudged in law to be, a complete and conclusive bar to any such suit or action: *Provided*, That this section shall not be construed so as to deprive aliens who are citizens or subjects of any

Not to deprive aliens to prosecute claims in the

Court of Claims when the same right is awarded to citizens of the United States by their governm'ts.

government which accords to citizens of the United States the right to prosecute claims against such government in its courts, of the privilege of prosecuting claims against the United States in the Court of Claims, as now provided by law.

Meaning of the "Abandoned or captured property act" declared.

SEC. 3. *And be it fur ther enacted*, That it is hereby declared to have been the true intent and meaning of the act approved March twelve, eighteen hundred and sixty-three, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," that the remedy given in cases of seizure made under said act, by preferring claim in the Court of Claims, should be exclusive, precluding the owner of any property taken by the agents of the Treasury Department as abandoned or captured property in virtue or under color of said act from suit at common law, or any other mode of redress whatever, before any court or tribunal other than said Court of Claims; and in all cases in which suits of trespass, replevin, detinue, or any other form of action may have been brought and are now pending, or shall hereafter be brought against any person for or on account of private property taken by such person as an officer or agent of the United States, in virtue or under color of the act aforesaid, or the act approved July second, eighteen hundred and sixty-four, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection," the defendant may and shall plead or allege in bar thereof that such act was done or omitted to be done by him as an officer or agent of the United States in the administration of one of the acts of Congress aforesaid, or in virtue or under color thereof; and such plea or allegation, if the fact be sustained by the proof, shall be, and shall be deemed and adjudged in law to be, a complete and conclusive bar to any such suit or action:

Proviso as to payment of judgments.

Provided, however, That no judgment, recovered in accordance with this act, shall be paid by the United States, unless the amount received by the defendant as the proceeds of the transaction which was the foundation of the suit shall have been paid into the treasury, except upon an appropriation duly made therefor after a full examination of the claim upon its merits.

Approved July 27, 1868.

Supreme Court of the United States.

DECEMBER TERM, 1869.

No. 452.

THE UNITED STATES, APPELLANT,

vs.

EDWARD PADELFORD, APPELLEE.

BRIEF SUBMITTED FOR APPELLEE

BY

T. W. BARTLEY.

Printed by Darby & Duffy, Printers, Corner Penn. avenue and 11th st.

Jno. Clifford

Supreme Court of the United States.

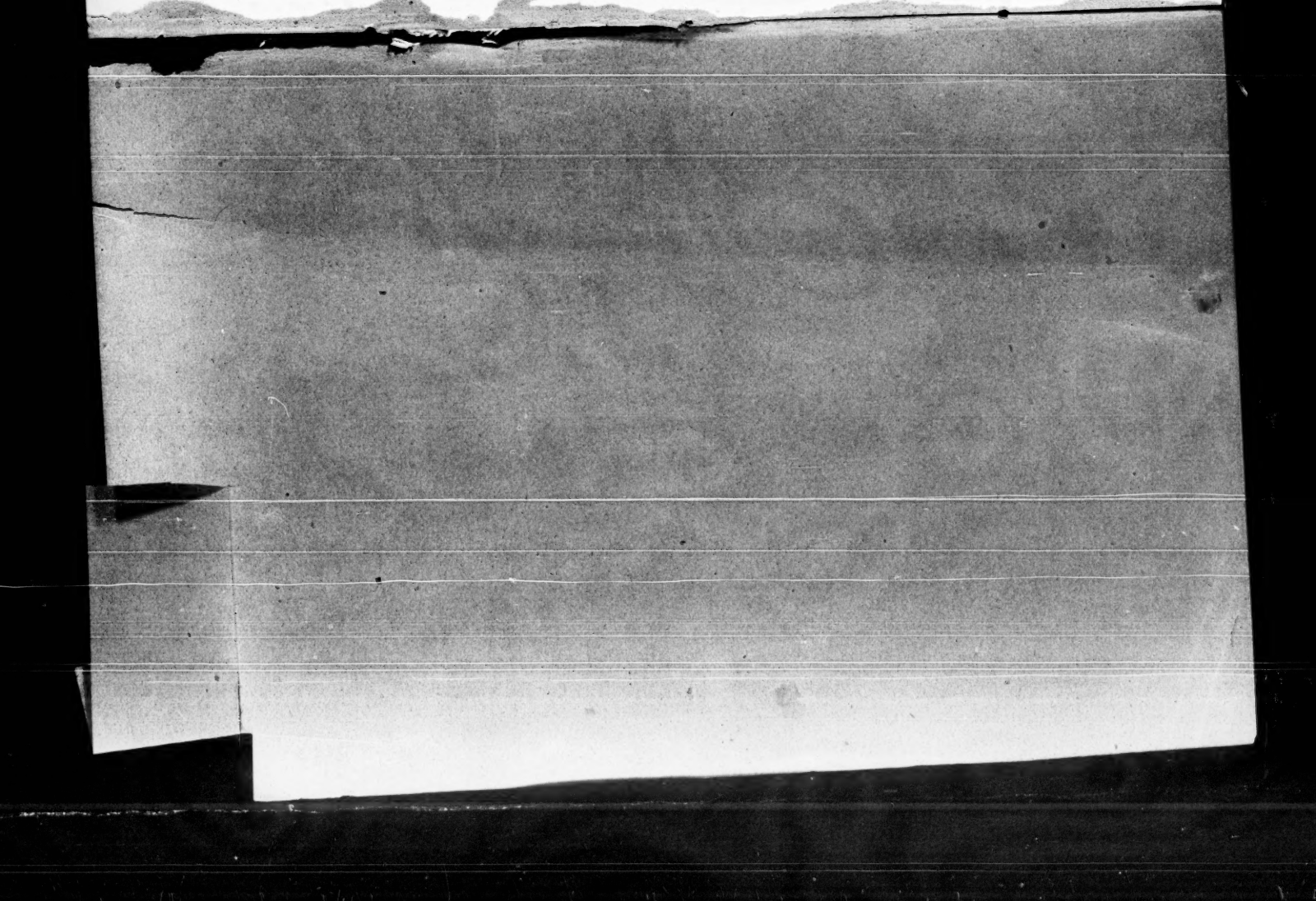
DECEMBER TERM, 1860.

[illegible], Appellant,

[illegible], Appellee.

[illegible], Appellee.

[illegible] Press, avenue and 11th st.



Supreme Court of the United States.

DECEMBER TERM, 1869.

No. 438.

THE UNITED STATES, APPELLANT,

vs.

EDWARD PADELFORD, APPELLEE.

BRIEF SUBMITTED FOR APPELLEE

BY

T. W. BARTLEY.

The questions here made are decisive of the case of Klein, administrator of Victor F. Wilson deceased, *vs.* The United States, now pending in this court, on appeal, but not reached or forwarded on the docket.

The argument following, preceding the supplement, was printed and submitted in the Court of Claims in the case of Klein, administrator of Wilson, on motion for new trial. And the part not applicable to the questions in this case, but having reference to the facts and peculiarities of the Wilson case, are stricken out as far as practicable without detracting from the weight of the argument on the questions here involved.

The attention of the court is respectfully requested more especially to the supplement.

WANT OF DUE DILIGENCE.

In the case of Garrison *vs.* The United States, (2d Vol. Rep. of this Court, p. 383,) the rule is laid down that "*a motion for a new trial on the ground of newly discovered evidence will not be granted where due diligence would have discovered the evidence before the first trial.*" This is in accordance with rule of the common law long settled and adhered to by the courts of justice, both in England and in this country; and I do not understand it to be claimed that the rule is not applicable alike to both parties in this case.

These papers were in the possession of the defendant over four years before the trial and judgment. If the captured papers of the rebel government (being, as they actually were, matters of great curiosity, as well as interest) had amounted to ten cart-loads, two clerks of the Treasury or War Department, of ordinary diligence, could have examined, labelled, and filed them away, *most certainly*, in six months. If the judgment had been against the plaintiff, with what kind of patience would this Court have listened to a motion for a new trial from him, based on papers in his possession or within his own control during the four years of litigation, and not produced on the trial? If the rules of justice and fairness are not to be equally applicable to both parties, where the United States is a party, then let it be understood that the Government stands like the lion in the fable, claiming and appropriating the lion's share because it has *the power*, not *the right*.

I was not a little surprised at the intimation of the very able and vigilant counsel for the United States, thrown out in the course of his argument, that the Government did not have *an equal chance*. Such a complaint, I most respectfully submit, comes with an ill grace from that side, as is most fully shown in the reported decisions of this Court, as well as in the laws regulating its practice. It has been said from high authority, that when the Government litigates with citizens in the courts of justice, the parties stand upon equal footing; and yet, in this Court, great inequalities exist, and most material

advantages are given to the Government, in the
The right of appeal is given to the United State
withheld from the claimant. After judgment,
ment may move for a new trial on grounds not
claimant; and also pending an appeal, or at an
in two years after the final disposition of the
trial may be given to the United States—a priv
the claimant. But this is not all. The right
to the competency of most important witnesse
the Government, which is withheld from the cl
the progress of the jurisprudence of this and of
countries, the door to the admissibility of evide
thrown wide open, and not only parties in inter
ties to the suit, are made competent to testify,
objection on the ground of interest, for consider
gard simply to the credibility of witnesses. Ye
special provision in the enactment of Congress,
the testimony of the claimant, and of all person
indirectly interested, and of persons standing i
ciary relation of administrator, guardian, or
cluded for incompetency, but also of the persons
the claimant has purchased or derived his titl
perfectly disinterested. And while all this t
persons, whose means of knowledge may be th
most essential to the cause of justice, is actually
for incompetency on the part of the claimant, th
is trammelled by no such difficulties, but allo
and use the testimony of all witnesses, however
and also to examine the claimant himself, if fo
tageous. Notwithstanding this monstrous ine
injustice, discreditable to the nation, the complai
that the Government does not have an equal c
that, too, when it is apparent that the clamor an
from the various departments of the Governmen
rounding us are such, that they can scarcely be s
the members of this Court perfectly free and inde
the exercise of an unbiased judgment.

I regret that the learned counsel deemed it his

ast fund was
htly, or for
s large is the
hat the sug-
in disregard
on."
by the mili-
ng the war,
t, probably
ration of, or
d. And the
ed property,
March, 1863,
seventy mil-
cation of the
y before me,
of the Trea-
on was over
ousand dol-
ade of $10,-
sury for ex-
And the
ury, and re-
aggregate,
The statute
er asserted.
of captured
easury after
will exceed
s is the net
nsportation
cost of the
would have
under the
y less than
o the Trea-
nd dollars.
brought in

WANT OF DUE DILIGENCE.

In the case of Garrison *vs.* The United States, (2d Vol. Rep. of this Court, p. 383,) the rule is laid down that "*a motion for a new trial on the ground of newly discovered evidence will not be granted where due diligence would have discovered the evidence before the first trial.*" This is in accordance with rule of the common law long settled and adhered to by the courts of justice, both in England and in this country; and I do not understand it to be claimed that the rule is not applicable alike to both parties in this case.

These papers were in the possession of the defendant over four years before the trial and judgment. If the captured papers of the rebel government (being, as they actually were, matters of great curiosity, as well as interest) had amounted to ten cart-loads, two clerks of the Treasury or War Department, of ordinary diligence, could have examined, labelled, and filed them away, *most certainly*, in six months. If the judgment had been against the plaintiff, with what kind of patience would this Court have listened to a motion for a new trial from him, based on papers in his possession or within his own control during the four years of litigation, and not produced on the trial? If the rules of justice and fairness are not to be equally applicable to both parties, where the United States is a party, then let it be understood that the Government stands like the lion in the fable, claiming and appropriating the lion's share because it has *the power*, not *the right*.

I was not a little surprised at the intimation of the very able and vigilant counsel for the United States, thrown out in the course of his argument, that the Government did not have *an equal chance*. Such a complaint, I most respectfully submit, comes with an ill grace from that side, as is most fully shown in the reported decisions of this Court, as well as in the laws regulating its practice. It has been said from high authority, that when the Government litigates with citizens in the courts of justice, the parties stand upon equal footing; and yet, in this Court, great inequalities exist, and most material

advantages are given to the Government, in the cotton cases. The right of appeal is given to the United States, while it is withheld from the claimant. After judgment, the Government may move for a new trial on grounds not allowed the claimant; and also pending an appeal, or at any time within two years after the final disposition of the case, a new trial may be given to the United States—a privilege denied the claimant. But this is not all. The right of objection to the competency of most important witnesses is given to the Government, which is withheld from the claimant. In the progress of the jurisprudence of this and other civilized countries, the door to the admissibility of evidence has been thrown wide open, and not only parties in interest, but parties to the suit, are made competent to testify, leaving the objection on the ground of interest, for consideration in regard simply to the credibility of witnesses. Yet here, by a special provision in the enactment of Congress, not only is the testimony of the claimant, and of all persons directly or indirectly interested, and of persons standing in the fiduciary relation of administrator, guardian, or trustee, excluded for incompetency, but also of the persons from whom the claimant has purchased or derived his title, although perfectly disinterested. And while all this testimony of persons, whose means of knowledge may be the best and most essential to the cause of justice, is actually suppressed for incompetency on the part of the claimant, the defendant is trammelled by no such difficulties, but allowed to take and use the testimony of all witnesses, however interested, and also to examine the claimant himself, if found advantageous. Notwithstanding this monstrous inequality and injustice, discreditable to the nation, the complaint is made that the Government does not have an equal chance, and that, too, when it is apparent that the clamor and influences from the various departments of the Government here surrounding us are such, that they can scarcely be said to leave the members of this Court perfectly free and independent in the exercise of an unbiased judgment.

I regret that the learned counsel deemed it his duty to re-

mark, that at this particular time, a multiplicity of fraudulent claims were being presented and pressed upon the Government, thereby arguing that less favorable consideration should be given to this cause. I protest against the logic that if frauds upon the Government in other cases are attempted, it is any reason for doing injustice in this case; and desperate, indeed, must be that defence which requires such support as this. And when the Argus eyes of the Government are open, and the fact is thus publicly known that numerous frauds are being attempted in other cases, there is not much danger that any of them will be accomplished. But there is a disingenuousness in this argument, which displays more of the zeal of counsel than confidence in the ground of his motion. The effect of the argument is, that because in other cases fraudulent claims are being pressed, therefore, as a set off, the Government should do injustice in the matter of this claim. In the course of my professional life I have been counsel for the United States far more than I have been counsel against it, and it is my deliberate opinion, from my means of observation, that more than ten just and honest claims against the Government are rejected where one fraud is committed. And such is the strictness of the proof required, and such the long course of red tape to be followed in the prosecution of a claim, that it is scarcely possible for a fraudulent claim to pass the ordeal of investigation without detection.

Again, the learned counsel, travelling out of the issue here presented, remarks that the amount involved in this and numerous other cases, in which a similar question is presented, is large, reaching some $400,000 in all. This is another appeal which, I trust, the members of this Court are capable of justly appreciating. If the amount be large, it is no larger than the amount of the net proceeds of the property of the claimants which the Government holds *as a trust* for the true owner, who proves himself to be justly entitled to it. The obligation and high sense of the responsibility of a trustee is usually estimated in proportion to the extent of the trust fund. And this is the first time, in the course of

my life, that I have heard the fact that the trust fund was large intimated as a reason for treating it lightly, or for disregarding it. In proportion as the amount is large is the temptation to abuse and violate the trust, so that the suggestion of the learned counsel on this subject is in disregard of the supplication, "Lead us not into temptation."

The captured and abandoned property taken by the military forces and used for military purposes during the war, and not reported to the Treasury Department, probably exceeded one hundred millions of dollars, a restoration of, or a compensation for, no part of which is claimed. And the net proceeds of the sales of captured or abandoned property, under the enactment of Congress of the 12th of March, 1863, could not, in the aggregate, have been less than seventy millions of dollars. And, according to a communication of the Secretary of the Treasury of 8th May, 1868, now before me, the aggregate amount received by the Secretary of the Treasury from the sales of captured or abandoned cotton was over forty-four millions six hundred and sixty-two thousand dollars. From this it appears, that a deduction is made of $10,-265,877.83, for amounts advanced from the Treasury for expenses and amounts transferred to agents, &c. And the amount recovered from the Secretary of the Treasury, and recovered and yet claimed before this Court, in the aggregate, does not probably exceed six or eight millions. The statute of limitations is a bar to any claims to be hereafter asserted. So that the amount of the net proceeds of the sales of captured or abandoned cotton, which will remain in the Treasury after all established claims on it are allowed and paid, will exceed twenty-five millions of dollars at least, and this is the net amount after the payment of all expenses of transportation and sale, and payments to Treasury agents. The cost of the transportation and sale of Wilson's cotton, which would have cost him, had the military turned it over to him under the permit of the Treasury agent Yeatman, probably less than three thousand dollars, is charged in the report to the Treasury Department at something over twenty thousand dollars. Thus, while *the amount* of the plaintiff's claim is brought in

here as an argument against its allowance, it is less than the gross amount of the proceeds of the sales of Wilson's cotton by something like twenty thousand dollars. And, besides this, after the allowance and payment of all the claims for captured and abandoned cotton, which have been paid or preferred, there will remain in the Treasury *over twenty-five millions* of this trust fund unclaimed, which will go to the use of the Government.

THE INSUFFICIENCY OF THE GROUNDS OF THE MOTION.

It is neither shown nor alleged in the motion, *that there was any law, order, or regulation of the rebel government or power, civil or military, which required SURETIES on any such bond.* At this stage of this case essential facts, *neither alleged nor proven,* are not to be taken for granted, nor found from mere inference or presumption. And as it is neither alleged nor shown, we have a right to presume that it did not exist.

The terms and effect of these bonds do not amount to even *an agreement* on the part of Wilson to render assistance to the rebellion, nor even *an agreement* on the part of the quartermaster or commissary to perform *military duty.* The *effect* of the undertaking on the part of the principal is not that he will faithfully perform his military duties, (for a bond is never taken for that,) but that he will perform *his duties in the matter of accounting for and paying over all money and property which may come to his hands as such quartermaster or commissary.* It is simply a pecuniary obligation. If all money and property received by the principal are accounted for and delivered over, the obligation of the bond is preserved unbroken, and there is no liability on the bond whatsoever. By the principal, it is an obligation for his own personal acts. The obligation of the surety is merely *secondary.* While it is simply a *pecuniary obligation* on his part, and not an obligation *for military service,* it is only *secondary* as a pecuniary obligation. If the principal acts as an honest and honorable man in his pecuniary matters, there can be no liability of the surety. If the princi-

pal should prove to be a dishonest and unfaithful man, and become a defaulter, still the surety's obligation cannot be reached if the principal is entirely responsible and can make good the defalcation. So that, as a matter of fact and of law, this mere conditional agreement of the surety is only *secondary*. It is not for military services; it is not for his personal aid or comfort to the rebellion, or the personal services of himself, *present or prospective;* but simply a pecuniary and personal obligation for the integrity and common honesty of another, and that so remote as to stand upon the duplex contingency, first, of the personal fidelity and common honesty of another in pecuniary business transactions, and second, in case of the breach of these personal qualities or obligations, that the principal does not or cannot respond to make the defalcation good. The act, therefore, is not only a mere *simple agreement* to do some future act, but that founded on a duplex contingency, and to say the most of it, remote, uncertain, and even equivocal, as a matter of agreement to contribute money.

This motion, provided for by the 2d section of the act of June 25, 1868, is essentially different from motions for new trials under proceedings at common law. The motion is allowed at any time while the suit or claim is pending, either before, or on appeal, or within two years after the final disposition of the case, and "upon *such evidence* (although the same may be cumulative) as shall reasonably satisfy the Court that *any fraud, wrong, or injustice* in the premises has been done to the United States." Now, *fraud, wrong, or injustice* must be established *by evidence*, &c. And the party has two years after the final disposition of the case to procure and take this evidence. The reason why *ex parte* affidavits are allowed on motions for new trials in proceedings at common law is, that they are summary proceedings, and do not admit of the delay necessary to take evidence in the usual manner under the rules of the Court. But that reason being removed, and the special provision of the statute requiring that "fraud, wrong, or injustice" be established by "*evi-*

dence," and abundance of time being allowed for that, it is manifest that this motion cannot be supported by mere *ex parte* affidavits, but the important and essential facts to sustain the motion must be established by evidence taken under the existing rules of practice, upon notice or otherwise.

THE DISMISSION OF THE PETITION A JUDGMENT OF CONDEMNATION AND FORFEITURE OF PROPERTY.

The judgment of this court dismissing the plaintiff's petition is in effect a judgment of condemnation of the claimants' property. It works a confiscation of it. To justify this on the ground of the disloyalty of Wilson, it must be shown that he was *accessary* to the rebellion. The aid and comfort given by him must have amounted to a distinct and unequivocal overt act sufficient to amount to a crime. An act to work a forfeiture of property, which is a form of punishment, must be a crime or misdemeanor in itself.

Giving "aid or comfort to the rebellion" is the criminal act of being accessary to it. "Aid and comfort" have a defined, legal signification. "Aid" signifies "help, assistance, succor, &c., *actually* rendered." (Wor. Dict.) Blackstone defines it as, "subsidy, pecuniary tribute," &c. "Comfort" signifies, according to Worcester, "giving strength, support," &c. It is derived from the Latin word "*conforto*," "*to strengthen much.*" *Conforto* is compounded of "*con*," with, and *fortis*, strong or strength. Aid or comfort, therefore, imports substantial acts giving actual and real assistance, help, strength, succor, &c., amounting to a criminal act.

It is manifest from the legislation of Congress, during the war and since, in relation to the seizure, confiscation, and forfeiture of property for acts of hostility and rebellion against the United States, that it was not the intention of the Government to enforce the seizure and confiscation of property without giving the owner of the property an opportunity of being heard, and of claiming his property in a judicial proceeding. Even the confiscation act of July, 1862, which made the property of officers and soldiers in arms against the

United States, and also of persons giving aid and comfort to the rebellion, liable to seizure and forfeiture, provided proceedings for the condemnation of all such property in the judicial tribunals. The object of the war measures of the Government was to suppress the rebellion, not to rob the people of the rebellious States of their property. No such barbarous measure of warfare was thought of as that of plundering the people of the South of their private property, with a view of providing the means for the payment of the expenses of the war. The seizure and confiscation of property were simply in furtherance of the object of suppres[s] rebellion. And in all cases of seizures authorized [by] gress, proceedings for condemnation were provided f[or] the act of the 12th of March, 1863, in relation to [captured] and abandoned property. The proceeding therein [provided] for the owner or claimant of the property, in this Court, by petition, was a substitute for the proceedings for the condemnation of property seized in previous acts, as to captured and abandoned property. So that the dismission of the plaintiff's petition here is virtually a decree of confiscation or condemnation against the property claimed, and operates as a forfeiture of it to the Government. And *the aid* or *comfort* which, in this proceeding, thus works a forfeiture and confiscation of the property, is the *criminal act* of being accessary to the rebellion. The confiscation or forfeiture of property for acts of hostility to the Government is by way of punishment. By the second section of the act of the 17th of July, 1862, the act of giving "aid or comfort to the existing rebellion or insurrection" was made a criminal offence, punishable by fine or imprisonment, on conviction under indictment. The same offence of giving aid or comfort, which is here provided for as a criminal offence, is the act of the claimant which works a forfeiture of his property by the proceedings in this Court. The language of each act defining the offence is identical. All the acts of Congress having in view the same object, and touching the same subject-matter, must be construed *in pari materia*.

I do not speak of the rule of the degree of demonstrative

dence," and abundance of time being allowed for that, it is manifest that this motion cannot be supported by mere *ex parte* affidavits, but the important and essential facts to sustain the motion must be established by evidence taken under the existing rules of practice, upon notice or otherwise.

THE DISMISSION OF THE PETITION A JUDGMENT OF CONDEMNATION AND FORFEITURE OF PROPERTY.

The judgment of this court dismissing the plaintiff's petition is in effect a judgment of condemnation of the claimants' property. It works a confiscation of it. To justify this on the ground of the disloyalty of Wilson, it must be shown that he was *accessary* to the rebellion. The aid and comfort given by him must have amounted to a distinct and unequivocal overt act sufficient to amount to a crime. An act to work a forfeiture of property, which is a form of punishment, must be a crime or misdemeanor in itself.

Giving "aid or comfort to the rebellion" is the criminal act of being accessary to it. "Aid and comfort" have a defined, legal signification. "Aid" signifies "help, assistance, succor, &c., *actually* rendered." (Wor. Dict.) Blackstone defines it as, "subsidy, pecuniary tribute," &c. "Comfort" signifies, according to Worcester, "giving strength, support," &c. It is derived from the Latin word "*conforto,*" "*to strengthen much.*" *Conforto* is compounded of "*con,*" with, and *fortis*, strong or strength. Aid or comfort, therefore, imports substantial acts giving actual and real assistance, help, strength, succor, &c., amounting to a criminal act.

It is manifest from the legislation of Congress, during the war and since, in relation to the seizure, confiscation, and forfeiture of property for acts of hostility and rebellion against the United States, that it was not the intention of the Government to enforce the seizure and confiscation of property without giving the owner of the property an opportunity of being heard, and of claiming his property in a judicial proceeding. Even the confiscation act of July, 1862, which made the property of officers and soldiers in arms against the

United States, and also of persons giving aid and comfort to the rebellion, liable to seizure and forfeiture, provided proceedings for the condemnation of all such property in the judicial tribunals. The object of the war measures of the Government was to suppress the rebellion, not to rob the people of the rebellious States of their property. No such barbarous measure of warfare was thought of as that of plundering the people of the South of their private property, with a view of providing the means for the payment of the expenses of the war. The seizure and confiscation of property were simply in furtherance of the object of suppressing the rebellion. And in all cases of seizures authorized by Congress, proceedings for condemnation were provided for, until the act of the 12th of March, 1863, in relation to captured and abandoned property. The proceeding therein provided for the owner or claimant of the property, in this Court, by petition, was a substitute for the proceedings for the condemnation of property seized in previous acts, as to captured and abandoned property. So that the dismission of the plaintiff's petition here is virtually a decree of confiscation or condemnation against the property claimed, and operates as a forfeiture of it to the Government. And *the aid* or *comfort* which, in this proceeding, thus works a forfeiture and confiscation of the property, is the *criminal act* of being accessary to the rebellion. The confiscation or forfeiture of property for acts of hostility to the Government is by way of punishment. By the second section of the act of the 17th of July, 1862, the act of giving "aid or comfort to the existing rebellion or insurrection" was made a criminal offence, punishable by fine or imprisonment, on conviction under indictment. The same offence of giving aid or comfort, which is here provided for as a criminal offence, is the act of the claimant which works a forfeiture of his property by the proceedings in this Court. The language of each act defining the offence is identical. All the acts of Congress having in view the same object, and touching the same subject-matter, must be construed *in pari materia*.

I do not speak of the rule of the degree of demonstrative

certainty required in a criminal, and in a civil case, as being identical, but the elements which make out or constitute the offence are strictly the same. In the proceeding in this Court, by petition of the claimant, the act of "*aid* or *comfort*" to the rebellion, which works a forfeiture of his property, and thereby a dismission of his petition, must be composed of *the same substantial elements* which constitute the offence under the criminal statute, and must be proven to the satisfaction of the Court.

WILSON'S TRUE STATUS.

Did Victor F. Wilson become accessary to the rebellion, or give to it that aid or comfort which amounted to an offence, for which he became justly liable to punishment and the forfeiture of his property? Where a man is living in a community convulsed with the wild excitement of a civil war, and having a family and property to protect, while his own personal safety is daily in jeopardy, his *true status*, and the *fair intent* of his acts, are best explained and understood by *the general tenor* of his conduct. But where one or two specific acts, at variance with his general course of conduct, are charged against him as an offence, it becomes necessary to consider the essential elements which constitute a criminal offence.

A mere *intention* or a *proposition*, or even *an actual agreement*, to do a criminal act, cannot constitute the offence. There must be *an actual overt* act to accomplish it, and that not *a mere attempt*, but a consummation of the criminal act. If the act be checked or abandoned *in fieri* before it becomes fully effectual, it cannot constitute the offence. To constitute a larceny, there must be both a caption and asportation of the goods and a *felonious intent*. The felonious intent without the actual taking would be insufficient; and the taking must be, not a mere attempt, but a consummation of the act. In a case where the accused had cut the girdle of another, and in consequence the purse fell to the ground, but was not otherwise taken possession of by the accused, it was held to be no felony. So, also, in a case where a purse, taken by the

prisoner from the pocket of another, remained still attached by a string to keys still in the pocket, it was held the offence was incomplete. (Starkie on Evidence, Vol. 2, marginal, pp. 825 and 26, and Notes of Cases.) So, also, on a charge of murder, an *actual agreement* to do the act and the receipt of money on it, and even laying in wait for an opportunity, is insufficient. Until the death is actually produced the offence is not consummated. A *bare conspiracy* to levy war is not treason; there must be an overt act of actual levying of war. (*Ex parte* Bollman, 4 Cranch, 75; U. S. *vs.* Burr, 2 Burr's Trial, 407; 1 *Ibid*, 14.) The mere enlistment of men, who are never assembled, is not levying war, (1 Burr's Trial, 16;) and whether the act actually done amounts to treason involves the question of *the intention*. (The United States *vs.* Hodges, 2 Wh. Cr. Cases, 477.) "The intent of the act being essential, it is competent to show that, a long time before the alleged treasonable occurrence, facts had occurred, and rumours were prevalent in the neighborhood, which would explain certain particulars relied on to show a treasonable intent, and make them show a different intent." (The United States *vs.* Hanway, 2 Wall, Jr., C. C., p. 140.)

Upon the known principles of the criminal law, to constitute the offence of giving aid or comfort to treason or to a rebellion, three things are essential:

First, there must be an overt act, which is actually done, consummated, complete; not a mere attempt to do an act never carried out or effected; not a mere *agreement* to do an act which was never done, much less *an agreement* to do an act subject to a condition to occur in future, or dependent on a contingency which never occurred.

Second, the act done must be in its nature and effect an act of *aid and comfort* to the rebellion. It must be an act of some actual or appreciable advantage or benefit in furtherance of rebellion, and not a mere matter resting in contemplation or in imagination; not a mere matter of expectancy, and so equivocal as to be dependent on a contingency which may never occur, and which never did in fact occur. If it be in the nature of a moneyed contribution to the cause of the rebel-

lion, it must be something more than the simple agreement to contribute or pay money, never performed or upon which no money was ever paid. It must be something more than a naked agreement to contribute or pay money on a future contingency not expected at the time to occur, and which never did occur, and on which, therefore, no actual, legal liability to pay money ever matured.

And, in the third place, it must be an act done with *the intent* to aid and further the cause of the rebellion. If it was not done with a *criminal intent*, or intent to aid the rebellion; if it did not give the cause of the rebellion any actual advantage or benefit which it would not manifestly have had without it, and the act was done with *the intent* to do an act of personal kindness to a friend, or if it was done under duress, or under existing and surrounding circumstances of danger, intimidation, or fear, it could not amount to the offence. If, under surrounding circumstances of danger to himself and property, the act was done partly with *the intent* to do a favor to a neighbor and friend, and partly to secure the friendship and aid of his neighbors in the event of difficulty to himself, family, and property, arising from his not having been in favor of the rebellion, it could not constitute the offence. To constitute the offence, it must appear *unequivocally* that the act was done with *the intent* to aid the rebellion, and not from an intent merely to do an act of personal kindness, and also secure for himself and family the aid and protection of his neighbors, in case of difficulty and distress from dangers threatening him daily.

ACTS AIDING REBELLION AND YET NOT DISLOYAL.

The acts of a man living under the dominion of the rebel power may, in many instances, indirectly, or consequentially, or unintentionally tend to give aid or comfort to the rebellion, and yet not amount to the criminal offence which subjects him to the forfeiture of his property.

1. The farmer or planter in raising and selling his products, the merchant in buying and selling his merchandise, and the mechanic or manufacturer in making and selling

his frabrics, may each aid the rebellion, but it is not that kind of aid which is criminal.

2. The voluntary payment of taxes imposed by the Confederate authorities gave aid to the rebellion, and yet it was not criminal.

3. The furnishing of food or clothing to a sick or needy soldier of the rebel army, or to his family, with the intent of doing an act of personal kindness, although it may have aided the rebellion by restoring the soldier to the ranks of the rebel army, is conceded not to be criminal.

4. Furnishing medical aid and attendance to a wounded rebel soldier or officer, either on the battle-field or at his home, by means of which he was restored and returned to the service of the rebel army, is conceded not to be criminal aid or comfort.

5. Even subscribing to the Confederate loan under circumstances of intimidation has been held not an act of criminal aid and comfort to the rebel cause.

The language used in the decision of this Court in the case of Grossmeyer *vs.* The United States, (4 Rep. Court of Claims, pp. 12 and 13,) is in point in this case, and too important to be omitted :

"We think a loyal man, like a truthful or honest one, ought to have the benefit of his general good conduct and character. In every doubtful case it ought to weigh in his favor. It would be unnatural, as well as cruel, to infer and believe that a man residing in the rebel territory, and who, through all the dangers and persecutions of the war, against all the promptings of interest, and the influence of friends and circumstances, had 'consistently adhered to the United States,' yet had all the time been secretly guilty of treason.

"Nor do we think that offices and acts of affection or humanity, rendered by persons to individuals engaged in rebellion, come within the interdictions of these acts. The laws are said to be silent amid the clash of arms. But there is a law in man's higher and better nature which is always heard above the din of war. It is the law of human pity and sympathy; without this the Christian becomes a savage, and man a monster. Those men and women who, from motives of humanity and charity, on the battle-fields and in the hospitals, ministered to the weary and the wounded, the sick

and the dying of the rebel and the Union soldiers alike, I think were not guilty of 'giving aid and comfort to the rebellion or to the persons engaged therein' within the meaning of these acts, although through those ministrations many rebel soldiers may have been restored to the ranks of the insurrectionary forces. The 'aid or comfort' denounced in these acts is such as forfeits a man's property, outlaws him from the courts of his country, to which loyal men have free access, deprives him of rights which they enjoy, and stamps him as guilty of at least incipient treason. Such legal consequences never flow from innocent motives and conduct. The 'aid or comfort' which is visited with such disqualifications and penalties are not mere indifferent facts, but vicious and criminal acts. To constitute them such they must have been committed with the intention and for the purpose of aiding the rebellion, and promoting its power and success, or from other improper motives. To do any act which tended to support the rebellion, where no other motive is apparent or approved, is evidence of bad intention; for every man is presumed to intend the natural result of his actions. But where the whole conduct and life of a man has been consistent with his allegiance to his country, and a single act of a doubtful motive is presented, and which may have resulted from fear, affection, or humanity, his character, his general character for loyalty, should turn the scale."

The war being over, and the rebellion entirely suppressed, the objects of the confiscation and forfeitures of property are past. It would be highly discreditable to the country to say that the object of these forfeitures of private property was founded in cupidity on the part of the Government. The power of remitting forfeitures and granting amnesty has been not only liberally authorized by Congress, but also liberally exercised by the executive authorities. And it is the true policy, as well as the reason of the law, that it should now be administered in a spirit of liberality, and a generous regard for the amicable relations of the people of the country. Where the rights of property are fully and satisfactorily proven, it is neither good policy nor just to claim forfeitures for charges of disloyalty on slight grounds. I, therefore claim a liberal construction of the law.

APPLICATION OF THE LAW TO THE CASE.

In the light of what has been said, I invite the attention of the Court to the particular consideration of the acts here charged to be *ipso facto* acts of criminal aid to the cause of the rebellion.

I admit that this circumstance of suretyship is competent evidence to be taken into consideration in connection with other evidence as bearing on the question of the *intention* of the claimant in the whole course of his conduct. But I deny that this simple circumstance of being such surety is, in and of itself, even *prima facie* evidence of aid or comfort to the rebellion. If the condition of the bond had been broken by the principal, and the liability of the sureties had become complete or absolute, and the surety had come forward and voluntarily paid up the amount of the principal's defalcation, that might, unexplained, tend to show a contribution amounting to aid and comfort to the rebellion. But simply signing the bond, or endorsing the personal responsibility and fidelity of the principal, does not *ipso facto* amount to any such thing. That simple act did not contribute a man nor a dollar, nor any substantial means of any kind whatever, to the rebel military service. The principal, or quartermaster himself, had, as it appears in the case, previously entered the service of the Confederacy. Before condition broken, the obligation of the surety is imperfect, *dependent* on a *future contingency*. And after condition broken, his obligation is merely *secondary*, and cannot then be enforced unless the principal has failed to make good his *primary* liability. The most that can be said of this act of simple suretyship is, that it amounts to an agreement to *pay* or *contribute* as a *secondary* obligation, on a future contingency which was not expected to happen, and which never did in fact happen or transpire, and on which nothing was ever paid or could have been required. This, therefore, was too remote, too uncertain, too equivocal in its nature, to amount to actual or substantial contribution giving aid and comfort to the rebellion. The rebel authorities, it may be presumed, would never have given the principal the appointment as quartermaster had they

expected him to become a defaulter; and Wilson would never have become a surety for him had he expected him to violate his obligations and become a defaulter. That is clear. It was, therefore, a promise to pay on a future contingency, which neither party to it expected to occur at the time the bond was executed, and which in fact never did occur so as to actually enure to the benefit of the rebel cause as a contribution to it. It will not be claimed on the other side, I suppose, that the mere recognition of the rebel power or authority, or acquiescence in its regulations and requirements while living under its dominion, will subject a citizen to a charge of a criminal contribution of aid and comfort. A recent decision of the Supreme Court has negatived any such idea. Suppose that a man had entered into a contract in due form with the rebel authority to deliver supplies for the rebel army in the way of provisions, or horses, or arms and equipments, within a certain prescribed time, and afterwards totally disregarded his contract and made no attempt whatever to furnish a single article contracted for, could that man be charged with having given aid and comfort to the rebellion, when, in fact, he had injured it? In such case there might have been an intention to aid the rebellion, but there was no overt act which did actually render substantial aid. The enforcement of the obligation could not have benefited them: *first*, because the obligation was a legal nullity, and could not have been enforced by legal process or legal judicial tribunals; and, *secondly*, a recovery of damages could not have gone beyond the damages suffered. If such a contract to furnish supplies *unperformed* was no act of aid and comfort, *a fortiori*, the mere obligation of a surety, *secondary* in its nature, and dependent on a future contingency, which never occurred, could not have been an act of aid and comfort.

The argument of the counsel on the other side assumes virtually that the principal is but an agent for the surety, and for whose acts he is responsible. What is the true nature and extent of the obligation of the surety? The condition goes no further than that the principal will account for and pay over all moneys and property which may come

to his hands as such quartermaster. It is nothing but a mere pecuniary obligation. The surety can be made responsible for nothing but a mere failure by the principal to account for and pay or deliver over money or property as required. It is nothing more than a mere endorsement of the principal's responsibility and honesty. And if the principal should fail in his duties as quartermaster, the surety cannot be reached until the property of the principal is exhausted. There is nothing, in fact, in the effect of this bond, which pledges or obligates the surety for the fidelity of the principal in his adherence to the cause of the rebellion. The surety's obligation goes no further than an endorsement of the principal's honesty and integrity as a man. Common honesty requires of the principal that he account for and pay over all money and property which may come to his hands, according to the terms on which he receives it. This involves simply his integrity as a man and his responsibility as to property. Beyond this the obligation has no legal effect. After the principal shall have entered upon his duties as quartermaster, it would be no violation of the obligations of the bond by the surety if he should advise, and even succeed in persuading, his principal, to deliver up all moneys and property as honor and common honesty require of him, and then to abandon and desert the rebel cause and join the Federal army. Where a man has obtained an appointment as quartermaster or commissary who is known to be an honest man, of good business habits and capacity, and of large means of his own, a personal friend, knowing intimately his integrity and honor as a man and his ample responsibility as to property, could not refuse, when requested to become a surety on his bond for a mere pecuniary obligation, without disturbing the friendly social relations between them. There would be no dangerous risk to be incurred. It would be simply a personal favor or act of kindness. It would be a simple endorsement of the principal's personal integrity, honor, and responsibility, and not an endorsement of his rebel proclivities. It is a mere personal act, a mere act of personal kindness, which the courtesies and reciproci-

ties among business men require, and is so understood by them. It is not an endorsement of the political opinions or attachments of the man, and is not so understood among men, but a simple endorsement of his personal qualities as a man of honor and responsibility. Providing he done with the property which came to his hands as honor and common honesty required, he might have betrayed the rebel cause, acted as a spy for the Federal army, or deserted, and went over and joined the Federal army, and it would have been no violation of his bond. When Horace Greeley endorsed the bond of Jefferson Davis as his surety, he endorsed his honor as a man, but not *his political principles*, nor his treason. The counsel on the other side says that this was after the war was over, and only for the personal appearance of Mr. Davis; but the principle is the same. A man may be an accessary after the fact as well as before. The man who aids a criminal to escape or evade the penalties of the law is as clearly accessary as the man who gives aid or comfort before the offence was committed. The undertaking of a pecuniary obligation for a man's appearance to answer to an indictment for treason falls short of an adoption of his political opinions, or of participation in his treasonable acts, in the same sense, that the pecuniary obligation of a surety for a quartermaster that he will not make default in accounting for and paying over money and property in his hands as common honesty required of him, fails to be an adoption of his political opinions, or an assumption of responsibility for acts of hostility or rebellion.

The private and domestic relations of men are in many respects distinct from, and independent of, their public relations. The social fabric and the political organization are entire different things. When governments are subverted or revolutionized, the structure of the private relations and the social life of the people, usually remain unchanged, private rights being respected and protected. There are certain amenities and reciprocal personal obligations in the social, private, and business relations of life not to be broken up by differences of opinion in regard to public and political

matters. And when differences in the public affairs of a nation become irreconcilable, and result in a conflict of arms, and a struggle for power, these amenities and personal ties and obligations of private life become doubly important. Humanity, and the most refined and elevated sentiments of the human heart, demand their strictest observance at such a time. Wilson was not required to quarrel with his neighbors and intimate friends because he was a Union man at the dark hour when the rebellion was raging around him, and held dominion over him. He had his family and his property and himself to protect. And his main, indeed, his only protection or safety, was found in closely observing and preserving the personal amenities and reciprocal personal ties and obligations of private, social, and business life. Without this his personal safety and the security of his property could not have been preserved for a day; and his family would have been liable to be turned out of house and home, and made dependent upon the charity of the world. And when, in observing the amenities and reciprocal personal obligations which prevail among business men in private life, he endorsed the personal honor, honesty, and responsibility of these two friends, by becoming their surety, he little thought that when he was dead and in his grave, that circumstance could be tortured into an endorsement of the political opinions of these men, and of the rebellion, which he had ever opposed and denounced with extreme bitterness; or further, that this circumstance could ever be tortured into a crime, whereby his property could be confiscated and taken from his orphan children.

When, in a conflict of arms and struggle for civil power in a country, personal friends, bound together by the ties of blood or affection, differing from each other as to public affairs, enter the ranks of the opposing armies, their magnanimous and manly bearing towards each other does not require them to break up all personal confidence in each other, or to discard the amenities and reciprocal personal obligations of social and civilized life. And during the late civil war in this country, when brothers and friends, bound

to each other by the strongest ties of affection and business, but differing from each other in opinion, and enlisting, one in the ranks of the Federal army, and the other in the ranks of the rebel army, it would not be strange, and much less criminal, to find a soldier in the ranks of the rebel army a surety on the bond of a Federal quartermaster, or a soldier in the ranks of the Federal army a surety on the bond of a rebel quartermaster. Things even stranger than this did actually occur during the conflict, arising out of the personal relations of soldiers in the opposing armies, without the slightest perfidy of either to the cause in which he was engaged. If Wilson had been a quartermaster in the Federal army, and had called on either of these men for whom he endorsed, to become a surety on his bond, there would probably have been no hesitation whatever in a compliance with his request.

The only possible point of view in which this act could be said to be aid or comfort to the rebellion is, that it might have assisted the quartermaster or commissary to qualify himself to be admitted to the discharge of the duties of his place, and thereby contributed to give the rebels the services of such officer, which otherwise they could not or would not have had. If they could have had the benefit of his services without this act of suretyship by Wilson, then that act of his did not give them any advantage which they would not have had without it. If this act did not in some way, or to some extent, give substantial aid, strength, succor, or assistance to the rebellion, which they would not or could not have just as easily had without it, there was no aid or comfort actually done by it. Now, it cannot be disputed, that before Wilson signed the bond as surety, the quartermaster must have entered the service of the Confederacy, obtained his appointment, and subscribed the bond himself. Wilson's becoming a surety, therefore, being a subsequent act, could not have procured or induced the appointment. The rebellion had the opportunity of having the benefit of the services of the quartermaster without Wilson's act, and prior to Wilson's act; and as the result proved, the sureties on the bond were unnecessary, for

there was no defalcation. It is a sheer fallacy to say, that Wilson's becoming surety caused or procured the appointment or the services of this quartermaster. It is argued, that the sureties on the bond were required, or were essential, to enable the quartermaster to be qualified to act. But it is not alleged nor shown in this motion that any such thing was required by any law or military order or regulation of the Confederacy, or that it was essential that a quartermaster or commissary should give security on his bond. For aught that appears in the case, either of these officers might have acted without giving bond. The bond and securities may have been a mere voluntary thing, not obligatory, and not really necessary. If there was any law or regulation which prevented a quartermaster or commissary from acting, until such bond with sureties should be given, that fact must be averred and proven. This Court cannot officially take notice of the laws or regulations of the rebel government. But, as nothing of the kind is either averred or shown on this motion, we may presume that there existed nothing of the kind. The suretyship, therefore, was not essential, and the rebellion would have had the services of these officers without Wilson's signing the bond as well as with it.

But if this Court will, *ex officio,* take notice of the laws or regulations of the Confederacy, and find any such requirement, then, as the officer had been already appointed, and had executed his bond himself, and obtained another security besides Wilson, and it is not alleged or shown that two sureties were required, or if they had been, then, that they could not have been obtained just as well had Wilson refused to sign the bond, it is difficult to see how Wilson's becoming a surety could be said to be the means of giving the advantage of the services of the quartermaster to the rebellion. They were entitled to the services of the quartermaster, and also of the commissary, and would have had them just as well without as with Wilson's name. Why, then, should Wilson have refused an act of personal kindness to neighbors and friends when it was no injury to him, and gave the rebellion no advantage whatever which it would not have had as fully had he refused this accommodation to his friends?

The bond itself was legally a nullity, and must so be regarded and treated by all our courts of justice. It was void in every point of view. It was without two competent parties, the Southern Confederacy having no legal existence as an artificial person, and it was in contravention of the laws and Constitution of the United States. When applied to for the purpose of obtaining his signature to each of these bonds, Wilson might have said, as he probably did say, "Well, you know that I am opposed to this rebellion—I think it a great wrong. It will not succeed, but come to naught. This bond will be of no use; legally it is a nullity, and can do me no harm. If it be any personal accommodation to you, I will sign it; but it will do you no good, and will amount to nothing." He might well have said this, because the evidence in the case fully shows that such were his opinions.

The condition of these bonds never having been broken, Wilson was never liable to pay one dollar on them. But suppose that both the quartermaster and the commissary had become defaulters; they were men of large means, and could have responded. But suppose their property all exhausted, and Wilson sued on his liability, and that he defended on the ground that the bond was a nullity. It was less than a year from the time the quartermaster was appointed, and less than six months from the time of the commissary's appointment, until the surrender of Vicksburg, from which time Wilson and his property were under the protection of the Federal Government. In the nature of things, as facts eventuated, Wilson could never have been compelled to respond or pay a dollar on either of these bonds, even had the condition been broken. The circumstance, therefore, was too remote, too vague and uncertain, and too equivocal in its nature, to have amounted to any actual or substantial aid and comfort to the rebellion.

But if, in any sense or form, this transaction of Wilson's could have contributed aid or comfort to the rebellion, *his intention* is fully vindicated and shown to have been innocent.

And without a *criminal intent* there was no liability on his part. It was an act of personal kindness to a neighbor and friend, for whom he had been in the habit of endorsing in bank before the rebellion, and in whose responsibility and integrity he knew from intimate acquaintance that he could repose confidence. And the result proved that he was not mistaken. Surrounded by danger and threatened with difficulty, it was all important to him to preserve his friendly and personal relations with his neighbors, with whom he had been intimate before the war, even although they had engaged in the rebellion. His intention manifestly was to do an act of personal kindness to a neighbor, and preserve his friendly relations with those whose assistance he might need under the circumstances of danger and intimidation then threatening him. That his intention was not to aid the rebellion is shown by his general character, and his sentiments, and the general tenor of his conduct throughout and after the war.

WILSON'S GENERAL CHARACTER AND LOYAL CONDUCT.

1. Wilson's general character for loyalty and adherence to the United States is shown by a large number of witnesses, in all positions in life, of the most unquestionable veracity, and of the best means of knowledge; some of them officers of high standing in the Federal army, who had the means of knowing Wilson's standing, and how he was regarded by the people of both sides in the war; some of them officers and persons who had been engaged in the rebel service; many of them merchants and business men of Vicksburg, being there during the war, and observing Wilson's daily conduct; a number of them business men associated with Wilson, and in his employ during the war, and with the best means of knowledge; and some of them freedmen who had been his slaves.

2. Besides his known character and standing as a Union man throughout the war, specific facts are shown even more conclusive. It is conceded on all hands that he strenuously opposed secession and advocated the cause of the Union until

the commencement of the war, and as long as tolerance of private opinion would allow him to express himself. His common expression was, even after the war commenced, that secession and rebellion were "all nonsense, and would bring ruin on the country." He was the founder and head of the "Union club" at Vicksburg just before the war, and although not a politician, he contributed largely to support the Union newspaper in Vicksburg until the rebellion stopped it. By his advice and influence, he kept a number of men from volunteering and going into the service of the rebel army. By such men as Alston Mygatt and Duff Green, founders of the Loyal League and leaders of the Republican party in the State of Mississippi, it is shown from Wilson's daily conduct during the war, that he consistently adhered to the cause of the Union; that while rebel flags were common over the houses of the prominent citizens of Vicksburg, none ever floated over the house of Victor F. Wilson, though the most prominent in Vicksburg; also, that he was a man of great stability of mind and character, and of extensive influence, and that had he changed his opinion in regard to the rebellion and espoused its cause, at any time during the war, he would have received great attention from the rebels, and have been at once placed in high position of power and influence.

The following significant facts appear in the testimony, to which the attention of the Court is invited. Captain F. R. Turley, a witness for the Government, testified, among other things, that he had been a captain in the rebel army, and had raised and equipped his company in Vicksburg; and that, on one occasion, in conversation with Wilson, he said to him—

"'I expected to offer the company to the Confederate cause, or Confederate States, and that I would need money to feed and clothe them while in camp before they were accepted by the Confederate States. *Mr. Wilson did not meet me on that subject as willingly and promptly as other gentlemen had done. He did not show a willingness to respond to the cause, and finally put me off by saying that he reckoned he would have to do what I thought was right.* I never called

upon him afterwards for any pecuniary assistance, and did not receive any from him. * * * * It raised a doubt in my mind as to his sympathy with the Confederate cause.'

"(See pp. 46 and 47, book B.)

"The other fact appears in the deposition of Rev. C. K. Marshall, a man of acknowledged ability and high standing, but who identified himself with the cause of the rebellion. On p. 24, book A, Mr. Marshall testifies:

"'I knew Victor F. Wilson, of Vicksburg, well, and as intimately as neighbors having daily intercourse, from the time of his removal to Vicksburg, which, I think, was in 1849, until his death. He was a man of character and influence, and respected by men of all parties and persuasions. He was a just and benevolent man, and noted for his kindness and charity to the poor and suffering under all circumstances. In politics he was a Whig, and when the difficulties between the Northern and Southern States arose in 1861, he took his stand with great determination, but with marked reticence, against secession, and against the rebellion of the Southern States. On this subject I differed with him in opinion,' &c.

* * 'And about the time the war broke out, I met Victor F. Wilson, and asked him what he thought of it, when he replied very emphatically, and with great manifestation of feeling, that this whole matter of the Southern movement was *nonsense, and would bring ruin upon the country;* this showed *an irreconcilable difference of opinion* between him and myself, and I said no more to him. I often met him from that time on, when I was in Vicksburg, and I never heard him make any expression of opinion at variance with that above stated, nor did I have any satisfactory evidence of his having changed his opinion on that subject; and from all I saw or knew of him throughout, I believe that he was in favor of the Federal Government of the United States until his death, although during the war he may have done things from necessity and policy for self-preservation and the protection of his property, which looked at times like his having changed his opinion or position as to the Southern movements. But of this I know nothing,' &c.

"(C. K. Marshall's Deposition, p. 24.)

"If Victor F. Wilson had changed his position during the war, and taken ground with those favoring the rebellion, *that fact* would, most undeniably, have been made known to his neighbors and friends who were co-operating with the rebellion, or most certainly they would have heard of it."

He acquiesced in and adopted the war measures of the Federal Government as far as practicable.

"Shortly after Mr. Lincoln's 'proclamation of emancipation,' he treated his slaves as free, told them that they were free, and advised them to take care of themselves and keep out of the rebel army. At the same time he gave them money or paid them wages, and had a care over them.

"(See testimony of Jackson, pp. 93 and 94, book A; Sloane, p. 68; Thomas Allen Miller, rebutting evidence, book C, pp. 20 and 21.)"

The board of directors of the Southern Railroad Company, in which he was the largest stockholder, deposed him from the presidency of the company, and reported his stock, amounting to some two hundred thousand dollars, to the Southern Confederacy, for confiscation, on the ground of his treason to the Confederacy. On the surrender of Vicksburg, he at once most cordially and publicly united and co-operated with the officers of the Federal Government, military and civil, and aided in maintaining the authority of the United States in Vicksburg.

Immediately after the surrender of Vicksburg, in July, 1863, upon the suggestion of the two Strongs, men of low character and personal enemies, Wilson's property was seized by the Federal military authorities for confiscation. But upon a full investigation before a court ordered by Gen. McPherson, then commandant of the post at Vicksburg, Wilson was found to have been true and consistent in his adherence to the United States, and his property was restored to him. Then, and there, when everything was known and fresh in the recollection of the people of Vicksburg, touching Wilson's conduct, his loyalty stood the test and ordeal of a public investigation. He there had the full confidence of General McPherson, and the other Federal military officers, as a loyal man. By the death of Gen. McPherson we have been deprived of the benefit of his testimony; but to a great extent it has been supplied, by the testimony of Col. T. Clark Wright, who remained with McPherson as a staff officer, and adviser of the provost marshal, and in charge of the secret service. He gives Wilson's known standing as a Union

man, not only with the Federal officers, but also with the Confederates. Wilson was appointed a judge of the court at Vicksburg by Gen. McPherson shortly after the surrender of Vicksburg, and acted as such with two of the officers of the Federal army for some time, and until he was appointed by the President of the United States the collector of customs at the port of Vicksburg, and filled that position until his death. In each of these positions he took the requisite oath of office. There was nothing in the emoluments of these positions to create any inducement to a man in Wilson's situation to undertake the discharge of their duties; and it cannot be denied that he accepted and acted in these positions from loyal motives, and a desire to contribute the weight of his personal exertions and influence to maintain the Federal authority. This he done during the war, and when the ultimate result of the struggle of the rebellion was yet doubtful; and thereby brought down upon himself the denunciations and curses of his rebel neighbors.

These, with many other circumstances appearing in the evidence in this case, fully and most triumphantly vindicate the *innocency and loyalty of Wilson's intention.*

He was careful to conform to all the war measures of the Federal Government. And although he had done nothing which required pardon, he promptly took what was termed the "iron-clad" oath under President Lincoln's amnesty proclamation of the 8th of December, 1863. This proclamation was authorized by the 13th section of the act of Congress of the 17th July, 1862, and made a pledge before the world of the honor and fidelity of the United States, for "the restoration of all rights of property except as to slaves, on the condition of taking, and thenceforward keeping inviolate, the oath therein prescribed." (13 U. S. Statutes, p. 737.) This oath Victor F. Wilson took on the 15th day of February, 1864, two months after the proclamation was issued, and more than a year before the close of the war, and when the successful close of the war was yet uncertain and in doubt. It is not denied that Wilson kept this oath invi-

olate. The honor and faith of the Government stand solemnly pledged before the world for the restoration of this property. Was this pledge a deception and a false pretence? Is the honor and public faith of the nation thus solemnly plighted before the world to be tarnished and disregarded? Will the Government keep its faith and honor with Wilson as truly as he kept his solemn oath inviolate? The Punic faith of Carthagenian republic became a by-word and a scoff among the nations of the earth. Let no such stain of perfidy blot the fair fame and character of this great, growing, and prosperous country, now receiving a revenue income exceeding a million of dollars a day.

The money we seek to recover is not the property of the Government, and was not raised from its revenues. It is the property of a loyal Union citizen, whose sufferings and trials and losses during the terrible conflicts of the war no tongue now living can describe, and who, disregarding the scoffs and contumely, difficulties and dangers, of the rebel community around him, accepted public positions to aid in maintaining the *Federal authority* during the war, when the result was still in doubt and uncertainty. Plundered of a large portion of his property by the rebels, he sought a restoration of a large amount which went into the hands of the Federal authorities. But discouraged by the tardy process of justice, he died in despair and broken hearted, and his wife soon followed him to the grave. And I am here now to ask for his orphan children *that justice* which should have been done to him, had it been possible, while living. Shall it be refused by some technicality of law, or strained conclusion from the facts, because the amount of the claim is large, when many millions have gone into the Treasury from the sales of captured or abandoned cotton during the war, which never has been and never will be claimed? I ask the restoration in the name of truth and justice and right; I ask it for devotion to the cause of the Federal Union under untold difficulties, trials, and dangers; I ask it upon the faith and honor of the nation, solemnly pledged before the world.

SUPPLEMENT

TOUCHING THE EFFECT OF AMNESTY AND PARDON,

Under the Proclamation of December 8, 1863.

The oath of amnesty was taken by these parties after the fall of Savannah, and the question is as to its effect upon this cause. Amnesty is an act of oblivion, or general pardon for offences committed against a government. It has precisely the same effect upon communities or aggregations of individual transgressors that a pardon in the same words would have upon a single offender. Whether the constitutional power of the President to grant reprieves and pardons for offences committed against the United States gives the right to issue a general and effective proclamation of amnesty for rebellion against its authority, is a matter of controversy, but, as will appear in the sequel, has no place in this discussion; for, by an act of Congress of July 17, 1862, section 13, it was provided: "That the President is hereby authorized, at any time hereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon and amnesty, with such exceptions and at such time and on such conditions as he may deem expedient for the public welfare."

On the 8th December, 1863, the President, reciting this act of Congress, issued his proclamation, in which he did "proclaim, declare, and make known to all persons who have, directly or by implication, participated in the existing rebellion, except as hereinafter excepted, *that a full pardon is hereby granted to them and each of them, with restoration of all rights of property,* except as to slaves, and in property cases where rights of third parties shall have intervened, and upon the condition that every such

person shall take and subscribe an oath and thenceforward keep and maintain said oath inviolate." The form of the oath is given, and certain individuals and classes of offenders are excluded from its benefits and provisions. This oath the claimant has taken at the earliest opportunity, and has maintained and kept the same inviolate from that time forward. Nor is he embraced within any of the exceptions. This offer of Congress and the President embrace all the elements and attributes of a national overture, and their operation and effect are made to depend upon certain conditions and terms which have been accepted and performed by this claimant. And we are to consider now what effect, if any, such acceptance and performance produces upon the claim set up in this case for the proceeds of this cotton.

The Constitution confers upon Congress the right to "make rules concerning captures on land and water;" and upon this clause the Supreme Court of the United States, in the case of Brown *vs.* the United States, (8 Cranch, 129,) decided that "the power of confiscating enemy property is in the legislature," and that until the legislative authority had declared its will, no such confiscation could be decreed. And upon this same subject Mr. Chief Justice Chase, in delivering the judgment of the Supreme Court of the United States in the case of Mrs. Alexander's cotton, (2 Wallace, 419,) says: "Being enemies' property, the property was liable to capture and confiscation by the opposite party. (Prize cases, 2 Black, 687.) It is true that this rule as to private property on land has received very important qualifications from usage, from the reasonings of enlightened publicists, and from judicial decisions. It may now be regarded as substantially restricted 'to special cases dictated by the necessary operations of war,' (1 Kent, 92,) and as excluding in general 'the seizure of the private property of pacific persons for the sake of gain.' (Id., 93.) The commanding general may determine in what special cases its more stringent application is required by military emergencies, *while considerations of public policy and positive provisions of law and the general spirit of legislation must indicate the cases in which its application may be*

properly denied to the property of non-combatant enemies." These cases clearly recognize the power of Congress over this subject. How far the Executive or the military may go in the seizure of the private property of non-combatant enemies on land, in the absence of any legislation on the subject, it is unnecessary for us now to inquire. We have in the case of Brown *vs.* the United States a most clear and positive determination of the Supreme Court of the United States that no title vests by such capture, which the courts can recognize and enforce. This question, as it relates to the late rebellion, is not open to discussion, for Congress has fully exercised the power committed to them on this subject.

The first of the series of acts upon this subject was that of July 13, 1861, 12 Stat., 257. By the 5th section commercial intercourse with the insurrectionary territory was interdicted. Property coming from there, or being conveyed thither, was made liable to seizure and forfeiture, together with the vessel or conveyance in which it was found. By the 9th section of the same enactment, the requisite proceedings for the condemnation of the property in a proper form were prescribed. Further restrictions were imposed, and forfeitures for violations authorized by the act of May 20, 1862, 12 Stat., 404.

The act of August 6, 1861, 12 Stat., 319, subjects also to capture and confiscation all property of every kind used or intended to be used in aiding, abetting, or promoting the rebellion, or allowing it to be so used. It is made lawful subject of capture wherever found, and provision is made for libelling and condemning the same.

The fullest and most complete exercise of the power by Congress was in the act of July 17, 1862, 12 Stat., 589.

But whether the capture was made *jure belli*, or under the act of July 17, 1862, the result is the same. For Congress has constitutional power to make regulations respecting captures on *land* as well as water; and whether the capture be made under one power or under the other, Congress has directed that the mode of disposition of that property by *condem-*

nation under the act of 1862, and afterwards by sale, under the act of 1863.

In that law the punishment of treason and of participation in rebellion are prescribed. Among the punishments inflicted is the disqualification from ever holding any office of honor or profit under the Government of the United States. And also the seizure and condemnation of all "the estate and property, moneys, stocks, and credits of such persons," was inflicted as a part of the same punishment. The proceedings for the judicial condemnation of the property so seized and captured are provided for in the same act. And when the fact has been judicially ascertained that such property so captured had "belonged to a person engaged in rebellion, or who had given aid or comfort thereto, then the same shall be condemned as enemy's property, and become the property of the United States." The next act in chronological order is that of March 12, 1863. That act does not in express terms direct or authorize the capture of any property. It was passed to provide for the disposition of the property or the proceeds of it which might be captured by the army on land, or by the navy upon the inland waters of the United States. This intention on the part of Congress was more apparent after the passage of the act of July 2, 1864, 13 Stat., 375. By this latter act all property captured under all the prior acts herein recited is expressly made subject to the disposition and custody provided by the act of March 12, 1863. There is not in all this series of laws a provision which authorizes any one to capture the property of a *loyal person*. In all of them the seizure and condemnation is made to depend upon the owner's disloyalty; and the loss of his property is inflicted, as a punishment for participation in the rebellion. In cases of prize, *jure belli*, the right of capture and condemnation depend upon the predicament of the property, and not upon the status of the owner. Whereas in the legislation under consideration, the reverse is the case. There the property is the offender, here the owner is the transgressor. It followed as a consequence from these enactments that the owner being loyal, the seizure and capture of his property was unauthorized and unlawful.

Such a capture worked no change in the title and right of the loyal owner. But the Government being in possession, were authorized to convert this perishable property into money, and thereby became a trustee for the loyal owner, in respect of these proceeds; and this upon the sole ground that the United States sold and received the proceeds of property, to which they had acquired no right or title by its capture, but which all the time belonged to such loyal claimant.

The case stands upon different ground where there has been actual participation in rebellion, and restoration is claimed upon the ground of pardon and amnesty. There the capture, if made before pardon or amnesty, was rightful and lawful, and the property of the owner was divested. If the pardon enables him to recover, it is by relating back to the commission of the offence, and wiping out both its guilt and its punishment at the same time. Has the pardon and amnesty set up in this case that effect? Such was doubtless the intention of the President when he issued the proclamation of December 8, 1863, from which I have already quoted. The acts authorizing these seizures and sales and confiscations were prior to the proclamation. They were in full force and operation when it was issued. And with the full and plenary power conferred upon him by the provision of the act of July 17, 1862, section 13, he declares that a full pardon and amnesty is granted to the offenders and each of them, "*with restoration of all rights of property, except as to slaves, and in property cases where the rights of third persons shall have intervened.*" This full pardon and amnesty, and restoration of rights of property were tendered upon certain terms and conditions. In this case, those terms and conditions have been complied with by the claimant, and the only question is, whether he is entitled to the benefit promised.

It was a national overture. The entire legislative and executive authority and power of this great nation combined in making it. It was designed to restore to all who would accept it, and perform its conditions, every right they had lost by their disloyalty, and remit all the punishment to which they were liable in consequence. These parliamentary pardons in England were

held to possess peculiar virtues, on account of the political omnipotence of parliament. But in this instance, we have the joint, concurrent action of Congress and the President weilding and representing the entire sovereignty of the nation, proposing pardon and amnesty to those who have offended. Surely they had both the power and the right to make such an offer. And when accepted, is it not effectual? Does it not work a *restoration* of the property lost by reason of the commission of the offence, which is now, not only forgiven by the pardon, but is entirely blóted out by the amnesty? They lost their right to this property by their offences. The pardon and amnesty of those same offences, proposes to restore to them this right of property, so lost. They accepted the pardon, and complied with the terms of the amnesty. And now, in this action, this claimant is seeking to assert that right of property. It is the only manner and the only form in which he can prefer such a claim. And unless he can obtain "*restoration of his rights of property*" here, and in this case, he cannot obtain them at all. And if it be denied him, it puts the United States in the position of having violated its plighted faith. This would be not only humiliating but absolutely dishonorable and disgraceful to this great nation. That Congress and the President contemplated any such result, I do not for a moment believe. It is only arrived at by a narrow, technical, constrained interpretation of the letter of the law without reference to its purpose, scope and spirit. The position that proof of the actual fact," of non-participation in rebellion at any time is necessary to confer jurisdiction on this court to hear and determine the case, cannot be maintained either on principle or upon the wording of the act itself. It is a disability in the party to recover, and not a want of power in the court to entertain the action. It is a personal liability imposed as a punishment for a crime committed. The cases of Cummings *vs.* The State of Missouri, 4 Wallace, 277, and Exparte Garland, Ib. 333, are clear and strong illustrations of the distinction. In the first case, the statute of Missouri did not operate to prevent any particular congregation from employing and listening to the teachings of such a pastor

as they might choose. They had clear right and full power in the premises. The disability imposed was personal to the pastor to occupy the position and perform its functions. So in the case of Garland. There was no want of power in the court to admit and hear attorneys in the causes pending before them. It was a specific and personal disability imposed on the counsellor as a punishment for transgression. So when the law excludes a man from holding certain offices of honor and profit because of his treason and rebellion, it is not a restraint upon the electing or appointing power, to confer the office upon him, but a want of *legal capacity* in himself to receive it and perform its functions, and reap its benefits. The very point is made and decided in *ex parte* Garland. "For," says the court, "exclusion from the practice of the law in the Federal courts or from any of the ordinary avocations of life, for past conduct, is punishment for such conduct." And it is to that the pardon extends. The court say: "The power of pardon conferred by the Constitution upon the President is unlimited except in cases of impeachment." "It reaches the punishment prescribed for an offence and the guilt of the offender." If pardon removes the disability to appear in a suit and plead for another, why not the disability to sue for himself? A pardon wipes out the offence and gives the man a new character and credit, and leaves him for all legal purposes precisely as if he never had transgressed. (5 Bac. Ab., 295; 2 Hawk. P. C., 30, § 33; 2 Bl. Com., 402; Plowd, 401; 7 Peters, 150; Bishop's Cr. L., § 713; Cope *vs.* Commonwealth, 4 Casey, 297; Perkins *vs.* Stevens, 24 Pick., 280.) There is only this limitation to its operation; it does not restore offices forfeited, or property or interests vested in third parties. (4 Bl. Com., 402; 8 Bac. Ab., Tit. Pardon.) It extends to all fines, penalties, and forfeitures accruing to the United States. (3 Op. Att'y Gen., 418–622; 6 id., 303–488; 10 id., 452; 4 id., 317; id., 458.) It will restore one who has been disfranchised by conviction, (9 Op. Att'y Gen., 478.)

A residence in the rebel States being made *prima facia* evidence of disloyalty, the very fact that the claimant is allowed to come

into the Court of Claims *to repel the presumption* of disloyalty is at once giving jurisdiction to the court. He is allowed the jurisdiction of the court to litigate the question of his loyalty as well as the other questions. To say that the question of his loyalty was a question of jurisdiction, would close the doors of the court on a man who resided in the insurrectionary States during the rebellion, as that gave rise to a legal presumption of his disloyalty.

When a man is outlawed in England he can bring no suit; not that the court has no jurisdiction to hear it, but because he has no legal capacity to sustain it. In such case, a plea to the jurisdiction of the court would, of all things, be the most absurd and preposterous. Reversal of the outlawry, or pardon of the offence, restores his right to sue, not by operating upon the faculties of the court, but by changing his legal status and relations as a suitor. His goods forfeited are *restored* by a writ especially formed to suit the exigency—a writ of *amoreas manus*. (Tidd. Pr., p. 40.)

The argument against the jurisdiction in this case defeats itself, because the case has to be tried in the Court of Claims, and an issue on its merits heard and decided upon the proofs before it can be ascertained whether there is jurisdiction or not. If that issue on the merits be decided one way, there is jurisdiction; but if the other way, there is none. It would be little less than ridiculous to say that if a man be proved guilty of treason and murder, a court of oyer and terminer has jurisdiction to hang him; but if he be innocent, they have no jurisdiction of the offence with which he stands charged. Yet such is the position assumed here. The suit may be brought, legal evidence taken, the witnesses be amenable for perjury, the merits of the case heard and tried, and a decision rendered. If the issue be found one way, there is full power and jurisdiction, and judgment follows; if found the other way, all the proceedings are a nullity.

This is making the jurisdiction of the court to depend upon the ultimate determination of the merits of the cause—a thing

which in itself would be an anomaly, if not a monstrosity, in legal practice. If this position be correct, and the argument for the United States sound, then it follows that to prove disloyalty of a claimant the witnesses in such a case may swear wilfully and falsely without incurring the legal guilt or penalty of perjury. The dismissal of the petition for want of jurisdiction concludes nobody, for if there be no jurisdiction there can be no judgment or decree; and if there be one, it binds nobody and is conclusive of nothing.

And this is in direct contravention of the act of March 3, 1863, section 7, which says, "that any final judgment rendered against the claimant on any claim prosecuted as aforesaid shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy."

It would not be a whit more fallacious to say, that when, for crime, a man is debarred by law, as a part of the penalty, from holding any office of honor or profit, that the appointing or electing power is thereby curtailed and destroyed. It does not and cannot affect either. They remain precisely as before. The defect is in the candidate or appointee, and a want of personal qualification to perform its duties and receive its honors and emoluments. A practical illustration of this principle occurs and is occurring every day. Men are debarred from holding certain offices—by reason of participation in rebellion—to which they have been elected or appointed. An act of Congress removing the disability enables the person to perform the office without a new election or appointment. A pardon or amnesty might produce the same effect.

The very point here then, I take it, is not a question of jurisdiction at all, but is simply whether the pardon and amnesty offered by Congress and the President, and accepted and fulfilled by the claimant, *restore* his right to the property which was forfeited by acts of rebellion; and this is surely not an open question; for the precise point has been ruled by the Supreme Court of the United States, in the case of Armstrong's foundry, 6 Wallace, 766. There the foundry of the plaintiff had

been used by the rebels with consent of the owner. It had, upon the occupation of New Orleans by the Union forces, been seized and libelled in the circuit court of the United States for the eastern district of Louisiana. Armstrong pleaded the amnesty offered by President Lincoln, and his acceptance and compliance with its terms. On the hearing, the plea of pardon and amnesty was overruled, and a decree of condemnation was rendered. Armstrong appealed.

While the cause was pending on the appeal in the Supreme Court of the United States, the President granted to Armstrong "a full pardon and amnesty for all offences by him committed arising from participation, direct or implied, in the said rebellion." There were certain conditions annexed. This pardon was pleaded and performance of conditions shown; and the question was, whether this pardon relieved from forfeiture the property seized.

The Chief Justice in delivering the opinion of the Court, says: "We think it clear that the statute regarded the consent of the owner to the employment of his property in aid of the rebellion as an offence, and *inflicted forfeiture as a penalty.* The general pardon of Armstrong, therefore relieved him of so much of the penalty as accrued to the United States." And the judgment was reversed and a new trial awarded. If the specific pardon of the President alone had this effect, the concurrent action of Congress with him in offering pardon and amnesty upon conditions accepted and performed could not have less effect. Congress and the President, for the nation, said to these people, "if you will do certain things, your rights of property shall be restored to you." They prove that they have accepted and fully complied with this offer. And this point was expressly decided in the case of St. Louis foundry, 6 Wall, 770. In that case the proclamation of 8th December, 1863, offering pardon and amnesty, and compliance with the overture were averred, and the Court say, that the claimant of property seized under the act of Aug. 6, 1861, is entitled to amnesty to the same extent, as under like pleading and proof, he would be

entitled to the benefit of pardon." And this Court, as the only organ of that same nation that can restore this property, refuses to do so, and by its judgment confiscates and forfeits this property to the United States, and inflicts the penalty in the face and despite of the pardon. Such conduct in an individual would be perfidious, it can on no ground be palliated much less justified in a nation. The case of the Venice, 2 Wallace, 259, is an illustration of how exact and punctilious is this Government in maintaining its plighted faith. There the pledge given by General Butler, in assuming command at New Orleans after its capture, that certain parties would be protected in their persons and property under the laws of the United States, was held obligatory and binding on the Government in its courts. And though the property captured was enemies' property, and so subject to capture and condemnation *jure belli*, yet coming within the terms of General Butler's proclamation, the national faith and honor could only be maintained by restoring the property. And it was so decreed, and held by this Court. Such was the effect given to the announcements of a district military commander. Shall the offer of Congress, made by the President, invested with all the dignity of *a national overture*, be of less account? This should not be, more especially as the proof is full and clear that the offer was accepted, and the conditions performed in good faith.

If this were a proceeding *in rem* in a prize or instance Court to forfeit and condemn the cotton claimed here, on the record presented, the Court could not hesitate to dismiss the libel and restore the property. There cannot be a doubt about this. And it would be strange, indeed incomprehensible, if the same rules as to the right of recovery and restoration, are not to be construed and applied in the same manner in furtherance of justice, as in every other court.

It is not necessary in this case to consider the question of the right of persons entitled to the benefit of the *general amnesty or pardon granted by President Johnson* to recover the property which, under forfeiture, had years ago been disposed of by the

Government, and the remedy afforded by the laws of Congress barred by the limitation of actions. In that amnesty proclamation there was no pledge made for the restoration of rights of property. The amnesty here relied on was expressly authorized by a law of Congress; and by the authority of Congress and the President a pledge of the United States was most solemnly made for the restoration of all rights of property, on a compliance by the owner with certain specific requirements.